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In the Supreme Court

ALEXANDER L. STEVAS,
CLERK

OF THE

United States

OCTOBER TERM, 1982

ALUMINUM COMPANY OF AMERICA, et al.,

Petitioners,

v.

CENTRAL LINCOLN PEOPLES' UTILITY DISTRICT, et al.,

Respondents,

and

PETER JOHNSON, as Administrator of the Bonneville
Power Administration, Department of Energy,

and JAMES EDWARDS, as Secretary of the
Department of Energy, and the

UNITED STATES OF AMERICA,

Respondents.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Appendix A	Opinion and Judgment of the Ninth Circuit (attached to Petition)
Appendix B	Pacific Northwest Electric Power Planning and Conservation Act
Appendix C	125 Cong. Rec. S 11592 (daily ed. Aug. 3, 1979) (remarks of Sen. Hatfield)
Appendix D	House Commerce Report, H.R. Rep. No. 967 (I), 96th Cong. 2d Sess. (1980)
Appendix E	House Interior Report, H.R. Rep. No. 967 (II), 96th Cong. 2d Sess. (1980)
Appendix F	Senate Report, S. Rep. No. 272, 96th Cong., 1st Sess. (1979)
Appendix G	125 Cong. Rec. H 9848-49, H 9864 (daily ed. Sept. 29, 1980) (remarks of Rep. Dingell and Rep. Foley)
Appendix H	DSI Contract (1981) Sections 7(c), 7(d), 14
Appendix I	Letter of BPA Administrator to Hon. Abra- ham B. Kazen (Aug. 19, 1980)
Appendix J	126 Cong. Rec. S 14691, S 14698 (daily ed. Nov. 19, 1980) (remarks of Sen. Jackson and Sen. McClure)
Appendix K	Memorandum regarding "BPA Obligations With Respect to DSI Top Quartile" (Feb. 12, 1981)
Appendix L	126 Cong. Rec. H 10678 (daily ed. Nov. 17, 1980) (remarks of Rep. Foley)
Appendix M	Cover Letter by BPA Administrator Offer- ing New DSI Contract (Aug. 27, 1981)

- Appendix N DSI Contract (1975) Sections 4, 7, General Contract Provisions, Section 8(b)
- Appendix O Statement of Jack A. Speer before House Subcomm. on Water and Power Resources
- Appendix P Bonneville Power Administration, U.S. Dept. of the Interior, *Draft Environmental Statement* (DES-77-21) II-71 (July 22, 1977)
- Appendix Q Pub. L. 87-701 § 112(e) (Sept. 26, 1962) 76 Stat. 604
- Appendix R List of DSI Parents, Subsidiaries, and Affiliates

Appendix B

PUBLIC LAW 96-501—96TH CONGRESS AN ACT

To assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act".

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PURPOSES

SECTION 2. The purposes of this Act, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System—

(A) conservation and efficiency in the use of electric power, and

(B) the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in—

(A) the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources,

(B) facilitating the orderly planning of the region's power system, and

(C) providing environmental quality;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization on a current

basis of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act—

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.

DEFINITIONS

SECTION 3. As used in this Act, the term—

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast—

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resources may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) "Consumer" means any end user of electric power.

(6) "Council" means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established pursuant to section 4.

(7) "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this Act.

(8) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) "Electric power" means electric peaking capacity, or electric energy, or both.

(10) "Federal base system resources" means—

(A) the Federal Columbia River System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on the effective date of this Act; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B) of this paragraph.

(11) "Indian tribe" means any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.

(12) "Major resource" means any resource that—

(A) has a planned capability greater than fifty average megawatts, and

(B) if acquired by the Administrator, is acquired for a period of more than five years.

Such term does not include any resource acquired pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act.

(13) "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer prior to September 1, 1979, and

(B) which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period.

(14) "Pacific Northwest", "region", or "regional" means—

(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide,

and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

(15) "Plan" means the Regional Electric Power and Conservation plan (including any amendments thereto) adopted pursuant to this Act and such plan shall apply to actions of the Administrator as specified in this Act.

(16) "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(17) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator (A) from resources or (B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.

(18) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(19) "Resource" means—

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(20) "Secretary" means the Secretary of Energy.

REGIONAL PLANNING AND PARTICIPATION

SECTION 4. (a)(1) The purposes of this section are to provide for the prompt establishment and effective operation of the Pacific Northwest Electric Power and Conservation Planning Council, to further the purposes of this Act by the Council promptly preparing and adopting (A) a regional conservation and electric power plan and (B) a program to protect, mitigate, and enhance fish and wildlife, and to otherwise expeditiously and effectively carry out the Council's responsibilities and functions under this Act.

(2) To achieve such purposes and facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and with the Bonneville Power Administration, the consent of Congress is given for an agreement described in this paragraph and not in conflict with this Act, pursuant to which—

(A) there shall be established a regional agency known as the "Pacific Northwest Electric Power and Conservation Planning Council" which (i) shall have its offices in the Pacific Northwest, (ii) shall carry out its functions and responsibilities in accordance with the provisions of this Act, (iii) shall continue in force and effect in accordance with the provisions of this Act, and (iv) except as otherwise provided in this Act,

shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law; and

(B) two persons from each State may be appointed, subject to the applicable laws of each such State, to undertake the functions and duties of members of the Council.

The State may fill any vacancy occurring prior to the expiration of the term of any member. The appointment of six initial members, subject to applicable State law, by June 30, 1981, by at least three of such States shall constitute an agreement by the States establishing the Council and such agreement is hereby consented to by the Congress. Upon request of the Governors of two of the States, the Secretary shall extend the June 30, 1981, date for six additional months to provide more time for the States to make such appointments.

(3) Except as otherwise provided by State law, each member appointed to the Council shall serve for a term of three years, except that, with respect to members initially appointed, each Governor shall designate one member to serve a term of two years and one member to serve a term of three years. The members of the Council shall select from among themselves a chairman. The members and officers and employees of the Council shall not be deemed to be officers or employees of the United States for any purpose. The Council shall appoint, fix compensation, and assign and delegate duties to such executive and additional personnel as the Council deems necessary to fulfill its functions under this Act, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this Act. The compensation of the members shall be fixed by State law. The compensation of the members and officers shall not exceed the rate prescribed for Federal officers and positions at step 1 of level GS-18 of the General Schedule.

(4) For the purpose of providing a uniform system of laws, in addition to this Act, applicable to the Council relating to the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, advisory committees, disclosure of information, judicial review of Council functions and actions under this Act, and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate, except that with respect to open meetings, the Federal laws applicable to open meetings in the case of the Federal Energy Regulatory Commission shall apply to the Council to the extent appropriate. In applying the Federal laws applicable to financial disclosure under the preceding sentence, such laws shall be applied to members of the Council without regard to the duration of their service on the Council or the amount of compensation received for such service. No contract, obligation, or other action of the Council shall be construed as an obligation of the United States or an obligation secured by the full faith and credit of the United States. For the purpose of judicial review of any action of the Council or challenging any provision of this Act relating to functions and responsibilities of the Council, notwithstanding any other provision of law, the courts of the United States shall have exclusive jurisdiction of any such review.

(b)(1) If the Council is not established and its members are not timely appointed in accordance with subsection (a) of this section, or if, at any time after such Council is established and its members are appointed in accordance with subsection (a)—

(A) any provision of this Act relating to the establishment of the Council or to any substantial function or responsibility of the Council (including any function or responsibility under subsection(d) or (h) of this section or under section 6(e) of this Act) is held to be unlawful by a final determination of any Federal court, or

(B) the plan or any program adopted by such Council under this section is held by a final determination of such a court to be ineffective by reason of subsection (a)(2)(B),

the Secretary shall establish the Council pursuant to this subsection as a Federal agency. The Secretary shall promptly publish a notice thereof in the Federal Register and notify the Governors of each of the States referred to in subsection (a) of this section.

(2) As soon as practicable, but not more than thirty days after the publication of the notice referred to in paragraph (1) of this subsection, and thereafter within forty-five days after a vacancy occurs, the Governors of the States of Washington, Oregon, Idaho, and Montana may each (under applicable State laws, if any) provide to the Secretary a list of nominations from such State for each of the State's positions to be selected for such Council. The Secretary may extend this time an additional thirty days. The list shall include at least two persons for each such position. The list shall include such information about such nominees as the Secretary may request. The Secretary shall appoint the Council members from each Governor's list of nominations for each State's positions, except that the Secretary may decline to appoint for any reason any of a Governor's nominees for a position and shall so notify the Governor. The Governor may thereafter make successive nominations within forty-five days of receipt of such notice until nominees acceptable to the Secretary are appointed for each position. In the event the Governor of any such State fails to make the required nominations for any State position on such Council within the time specified for such nominations, the Secretary shall select from such State and appoint the Council member or members for such position. The members of the Council shall select from among themselves one member of the Council as Chairman.

(3) The members of the Council established by this subsection who are not employed by the United States or a State shall receive compensation at a rate equal to the rate prescribed for offices and positions at level GS-18 of the General Schedule for each day such members are engaged in the actual performance of duties as members of such Council, except that no such member may be paid more in any calendar year than an officer or employee at step 1 of level GS-18 is paid during such year. Members of such Council shall be considered officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.) and shall also be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code. Such Council may appoint, and assign duties to, an executive director who shall serve at the pleasure of such Council and who shall be compensated at the rate established for GS-18 of the General Schedule. The executive director shall exercise the powers and duties delegated to such director by such Council, including the power to appoint and fix compensation of additional personnel in accordance with applicable Federal law to carry out the functions and responsibilities of such Council.

(4) When a Council is established under this subsection after a Council was established pursuant to subsection (a) of this section, the Secretary shall provide, to the greatest extent feasible, for the transfer to the Council established by this subsection of all funds, books, papers, documents, equipment, and other matters in order to facilitate the Council's capability to achieve the requirements of subsections (d) and (h) of this section. In order to carry out its functions and responsibilities under this Act expeditiously, the Council shall take into consideration any ac-

tions of the Council under subsection (a) and may review, modify, or confirm such actions without further proceedings.

(5)(A) At any time beginning one year after the plan referred to in such subsection (d) and the program referred to in such subsection (h) of this section are both finally adopted in accordance with this Act, the Council established pursuant to this subsection shall be terminated by the Secretary 90 days after the Governors of three of the States referred to in this subsection jointly provide for any reason to the Secretary a written request for such termination. Except as provided in subparagraph (B), upon such termination all functions and responsibilities of the Council under this Act shall also terminate.

(B) Upon such termination of the Council, the functions and responsibilities of the Council set forth in subsection (h) of this section shall be transferred to, and continue to be funded and carried out, jointly, by the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service, in the same manner and to the same extent as required by such subsection and in cooperation with the Federal and the region's State fish and wildlife agencies and Indian tribes referred to in subsection (h) of this section and the Secretary shall provide for the transfer to them of all records, books, documents, funds, and personnel of such Council that relate to subsection (h) matters. In order to carry out such functions and responsibilities expeditiously, the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service shall take into consideration any actions of the Council under this subsection, and may review, modify, or confirm such actions without further proceedings. In the event the Council is terminated pursuant to this paragraph, whenever any action of the Administrator requires any approval or other action by the Council, the Administrator may take such action without

such approval or action, except that the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits involving a major generating resource until the expenditure of funds for that purpose is specifically authorized by Act of Congress enacted after such termination.

(c)(1) The provisions of this subsection shall, except as specifically provided in this subsection, apply to the Council established pursuant to either subsection (a) or (b) of this section.

(2) A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this Act, all actions and decisions of the Council shall be by majority vote of the members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of—

(A) a majority of the members appointed to the Council, including the vote of at least one member from each State with members on the Council; or

(B) at least six members of the Council.

(3) The Council shall meet at the call of the Chairman or upon the request of any three members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.

(4) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions and responsibilities under this Act. The Council shall make available to the public a statement of its organization, practices, and procedures, and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.

(5) Upon request of the Council established pursuant to subsection (b) of this section, the head of any Federal agency is authorized to detail or assign to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this Act.

(6) At the Council's request, the Administrator of the General Services Administration shall furnish the Council established pursuant to subsection (b) of this section with such offices, equipment, supplies, and services in the same manner and to the same extent as such Administrator is authorized to furnish to any other Federal agency or instrumentality such offices, supplies, equipment, and services.

(7) Upon the request of the Congress or any committee thereof, the Council shall promptly provide to the Congress, or to such committee, any record, report, document, material, and other information which is in the possession of the Council.

(8) To obtain such information and advice as the Council determines to be necessary or appropriate to carry out its functions and responsibilities pursuant to this Act, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.

(9) The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

(10)(A) At the request of the Council, the Administrator shall pay from funds available to the Administrator the

compensation and other expenses of the Council as are authorized by this Act, including the reimbursement of those States with members on the Council for services and personnel to assist in preparing a plan pursuant to subsection (d) and a program pursuant to subsection (h) of this section, as the Council determines are necessary or appropriate for the performance of its functions and responsibilities. Such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d) of such Act. The records, reports, and other documents of the Council shall be available to the Comptroller General for review in connection with such audit or other review and examination by the Comptroller General pursuant to other provisions of law applicable to the Comptroller General. Funds provided by the Administrator for such payments shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

(B) Notwithstanding the limitation contained in the fourth sentence of subparagraph (A) of this paragraph, upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions and responsibilities under this Act the Administrator may raise such limit up to any amount not in excess of 0.10 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded.

(11) The Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological,

economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

(12) The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities under this Act.

(13) The Council shall ensure that the membership for any advisory committee established or formed pursuant to this section shall, to the extent feasible, include representatives of, and seek the advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers.

(d)(1) Within two years after the Council is established and the members are appointed pursuant to subsection (a) or (b) of this section, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, United States Code and such procedure as the Council shall adopt.

(2) Following adoption of the plan and any amendment thereto, all actions of the Administrator pursuant to sec-

tion 6 of this Act shall be consistent with the plan and any amendment thereto, except as otherwise specifically provided in this Act.

(e)(1) The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost-effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

(2) The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 of this Act to reduce or meet the Administrator's obligations with due consideration by the Council for (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

(3) To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

(A) an energy conservation program to be implemented under this Act, including, but not limited to, model conservation standards;

(B) recommendation for research and development;

(C) a methodology for determining quantifiable environmental costs and benefits under section 3(4);

(D) a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the

public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) of this subsection which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect, if any, of the requirements of subsection (h) on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and may include, to the extent practicable, an estimate of the types of resources from which such power should be acquired;

(E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;

(F) the program adopted pursuant to subsection (h); and

(G) if the Council recommends surcharges pursuant to subsection (f) of this section, a methodology for calculating such surcharges.

(4) The Council, taking into consideration the requirement that it devote its principal efforts to carrying out its responsibilities under subsections (d) and (h) of this section, shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall consult with

such customers and consumers in the conduct of such studies.

(f)(1) Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers, taking into account financial assistance made available to consumers under section 6(a) of this Act. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

(2) The Council by a majority vote of the members of the Council is authorized to recommend to the Administrator a surcharge and the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50

per centum of the Administrator's applicable rates for such load or portion thereof.

(g)(1) To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall maintain comprehensive programs to—

(A) inform the Pacific Northwest public of major regional power issues,

(B) obtain public views concerning major regional power issues, and

(C) secure advice and consultation from the Administrator's customers and others.

(2) In carrying out the provisions of this section, the Council and the Administrator shall—

(A) consult with the Administrator's customers;

(B) include the comments of such customers in the record of the Council's proceedings; and

(C) recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

(3) In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (A) investigate possible measures to be included in the plan, (B) provide public involvement and information regarding a proposed plan or amendment thereto, and (C) provide services which will assist in the

implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council, may be incorporated as part of the plan.

(h)(1)(A) The Council shall promptly develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. Because of the unique history, problems, and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries, the program, to the greatest extent possible, shall be designed to deal with that river and its tributaries as a system.

(B) This subsection shall be applicable solely to fish and wildlife, including related spawning grounds and habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify, or affect in any way the laws applicable to rivers or river systems, including electric power facilities related thereto, other than the Columbia River and its tributaries, or affect the rights and obligations of any agency, entity, or person under such laws.

(2) The Council shall request, in writing, promptly after the Council is established under either section 4(a) or 4(b) of this Act and prior to the development or review of the plan, or any major revision thereto, from the Federal, and the region's State, fish and wildlife agencies and from the region's appropriate Indian tribes, recommendations for—

(A) measures which can be expected to be implemented by the Administrator, using authorities under this Act and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries;

(B) establishing objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and

(C) fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the region's hydroelectric dams.

(3) Such agencies and tribes shall have 90 days to respond to such request, unless the Council extends the time for making such recommendations. The Federal, and the region's, water management agencies, and the region's electric power producing agencies, customers, and public may submit recommendations of the type referred to in paragraph (2) of this subsection. All recommendations shall be accompanied by detailed information and data in support of the recommendations.

(4)(A) The Council shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Administrator, to the Federal, and the region's, State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating, or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Notice shall also be given to the public. Copies of such recommendations and supporting documents shall be made available for review at the

offices of the Council and shall be available for reproduction at reasonable cost.

(B) The Council shall provide for public participation and comment regarding the recommendations and supporting documents, including an opportunity for written and oral comments, within such reasonable time as the Council deems appropriate.

(5) The Council shall develop a program on the basis of such recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers referred to in subparagraph (A) of paragraph (4). The program shall consist of measures to protect, mitigate, and enhance fish and wildlife affected by the development, operation, and management of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation.

(6) The Council shall include in the program measures which it determines, on the basis set forth in paragraph (5), will—

(A) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;

(B) be based on, and supported by, the best available scientific knowledge;

(C) utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost;

(D) be consistent with the legal rights of appropriate Indian tribes in the region; and

(E) in the case of anadromous fish—

(i) provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and

(ii) provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives.

(7) The Council shall determine whether each recommendation received is consistent with the purposes of this Act. In the event such recommendations are inconsistent with each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes. If the Council does not adopt any recommendation of the fish and wildlife agencies and Indian tribes as part of the program or any other recommendation, it shall explain in writing, as part of the program, the basis for its finding that the adoption of such recommendation would be—

(A) inconsistent with paragraph (5) of this subsection;

(B) inconsistent with paragraph (6) of this subsection; or

(C) less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.

(8) The Council shall consider, in developing and adopting a program pursuant to this subsection, the following principles:

(A) Enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and op-

eration of the hydroelectric facilities of the Columbia River and its tributaries as a system.

(B) Consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only.

(C) To the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the appropriate parties providing for the administration and funding of such additional measures.

(D) Monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the Administrator consistent with individual project impacts and system-wide objectives of this subsection.

(9) The Council shall adopt such program or amendments thereto within one year after the time provided for receipt of the recommendations. Such program shall also be included in the plan adopted by the Council under subsection (d).

(10)(A) The Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this Act and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this Act. Expenditures of the Administrator pur-

suant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(B) The Administrator may make expenditures from such fund which shall be included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than 15 years and an estimated cost of at least \$1,000,000 shall be funded in the same manner and in accordance with the same procedures as major transmission facilities under the Federal Columbia River Transmission System Act.

(C) The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.

(11)(A) The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall—

(i) exercise such responsibilities consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated;

(ii) exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.

(B) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes, and affected project operators in carrying out the provisions of this paragraph and shall, to the greatest extent practicable, coordinate their actions.

(12)(A) Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Interstate and Foreign Commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this Act, including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan when adopted. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers

a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof.

(B) The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this Act, including this subsection.

(i) The Council may from time to time review the actions of the Administrator pursuant to sections 4 and 6 of this Act to determine whether such actions are consistent with the plan and programs, the extent to which the plan and programs is being implemented, and to assist the Council in preparing amendments to the plan and programs.

(j)(1) The Council may request the Administrator to take an action under section 6 to carry out the Administrator's responsibilities under the plan.

(2) To the greatest extent practicable within ninety days after the Council's request, the Administrator shall respond to the Council in writing specifying—

(A) the means by which the Administrator will undertake the action or any modification thereof requested by the Council, or

(B) the reasons why such action would not be consistent with the plan, or with the Administrator's legal obligations under this Act, or other provisions of law, which the Administrator shall specifically identify.

(3) If the Administrator determines not to undertake the requested action, the Council, within sixty days after notice of the Administrator's determination, may request the Administrator to hold an informal hearing and make a final decision.

(k)(1) Not later than October 1, 1987, or six years after the Council is established under this Act, whichever is later, the Council shall complete a thorough analysis of conservation measures and conservation resources implemented pursuant to this Act during the five-year period beginning on the date the Council is established under this Act to determine if such measures or resources:

(A) have resulted or are likely to result in costs to consumers in the region greater than the costs of additional generating resources or additional fuel which the Council determines would be necessary in the absence of such measures or resources;

(B) have not been or are likely not to be generally equitable to all consumers in the region; or

(C) have impaired or are likely to impair the ability of the Administrator to carry out his obligations under this Act and other laws, consistent with sound business practices.

(2) The Administrator may determine that section 3(4) (D) shall not apply to any proposed conservation measure or resource if the Administrator finds after receipt of such analysis from the Council that such measure or resource would have any result or effect described in subparagraph (A),(B) or (C) of paragraph (1).

SALE OF POWER

SECTION 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville

Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region to the extent that such firm power load exceeds—

(A) the capability of such entity's firm peaking and energy resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2) Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that

enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this Act, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

(6) Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall—

(A) provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

(B) not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

(C) contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of the effective date of this Act, to be used to serve its own firm loads.

The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under para-

graph (1) of this subsection to be used to serve its firm load.

(c)(1) Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

(2) The purchase and exchange sale referred to in paragraph (1) of this subsection with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's Regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

(3) The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) of this subsection which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

(4) An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

(5) Subject to the provisions of sections 4 and 6, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

(6) Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

(7) The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include—

(A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;

(B) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and

(C) any costs of any generating facility which is terminated prior to initial commercial operation.

(d)(1)(A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

(B) After the effective date of this Act, the Administrator shall offer in accordance with subsection (g) of this section to each existing direct service industrial customer an initial long term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power."

(2) The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines, after a plan has been adopted pursuant to section 4 of this Act, that such proposed sale is consistent with the plan and that—

(A) additional power system reserves are required for the region's firm loads,

(B) the proposed sale would provide a cost-effective method of supplying such reserves,

(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and

(D) the Administrator has or can acquire sufficient electric power to serve such loads, and

unless the Council has determined such sale is consistent with the plan. After such determination by the Administrator and by the Council, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) of this subsection as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

(4)(A) As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on the effective date of this Act.

(B) The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

(C)(i) Where a new contract is offered in accordance with subsection (g) to any existing direct service industrial customer which has not received electric power prior to the effective date of this Act from the Administrator pursuant to a contract with the Administrator existing on the date of the enactment of this Act, electric power delivered under such new contract shall be conditioned on the Administrator reasonably acquiring, in accordance with this Act and within such estimated period of time (as specified in the contract) as he deems reasonable, sufficient resources to meet, on a planning basis, the load requirement of such customer. Such contract shall also provide that the obligation of the Administrator to acquire such resources to meet such load requirement shall, except as provided in clause (ii) of this subparagraph, apply only to such customer and shall not be sold or exchanged by such customer to any other person.

(ii) Rights under a contract described in clause (i) of this subparagraph may be transferred by an existing direct service industrial customer referred to in clause (i) to a successor in interest in connection with a reorganization or other transfer of all major assets of such customer. Following such a transfer, such successor in interest (or any other subsequent successor in interest) may also transfer rights under such a contract only in connection with a reorganization or other transfer of all assets of such successor in interest.

(iii) The limitations of clause (i) of this subparagraph shall not apply to any customer referred to in clause (i) whenever the Administrator determines that such customer is receiving electric power pursuant to a contract referred to in such clause (ii).

(e)(1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

- (A) public bodies and cooperatives;
- (B) Federal agencies;
- (C) direct service industrial; and
- (D) investor owned utilities.

(2) Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 6 shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 6 shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

(3) The Administrator shall, consistent with the provisions of this Act, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) of this section are distributed equitably throughout the region.

(f) The Administrator is authorized to sell, or otherwise dispose of, electric power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsections (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).

(g)(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to—

(A) existing public body and cooperative customers and investor-owned utility customers under subsection (b) of this section;

(B) Federal agency customers under subsection (b) of this section;

(C) electric utility customers under subsection (c) of this section; and

(D) direct service industrial customers under subsection (d)(1).

(2) Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

(3) An initial contract with a public body, cooperative or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) of this section shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

(4) An initial contract with an electric utility customer pursuant to subsection (c) of this section shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after the effective date of this Act.

(5) An initial contract with a direct service industrial customer pursuant to subsection (d)(1), shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after the effective date of this Act. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

(6) Initial contracts offered public body, cooperative and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) of this section each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

(7) The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1)(A) through (D).

CONSERVATION AND RESOURCE ACQUISITION

SECTION 6. (a)(1) The Administrator shall acquire such resources through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan, or if no plan is in effect with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) and, in the case of major resources, in accordance with subsection (c) of this section. Such con-

servation measures and such resources may include, but are not limited to—

(A) loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

(B) technical and financial assistance to, and other cooperation with, the Administrator's customers and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of any cost-effective conservation objectives adopted by individual States or subdivisions thereof,

(C) aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 4(f), and

(D) conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

(2) In addition to acquiring electric power pursuant to section 5(c), or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act, the Administrator shall acquire, in accordance with this section, sufficient resources—

(A) to meet his contractual obligations that remain after taking into account planned savings from measures provided for in paragraph (1) of this subsection, and

(B) to assist in meeting the requirements of section 4(h) of this Act.

The Administrator shall acquire such resources without considering restrictions which may apply pursuant to section 5(b) of this Act.

(b)(1) Except as specifically provided in this section, acquisition of resources under this Act shall be consistent with the plan, as determined by the Administrator.

(2) The Administrator may acquire resources (other than major resources) under this Act which are not consistent with the plan, but which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act.

(3) If no plan is in effect, the Administrator may acquire resources under this Act which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act.

(4) The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions which will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner consistent with the considerations specified in section 4(e)(2) of this Act.

(5) Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to achieve conservation and to acquire renewable resources installed by a residential or small commercial consumer to reduce load, pursuant to subsection (a)(1) of this section.

(c)(1) For each proposal under subsection (a), (b), (f), (h), or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to

the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of

information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

(A) that the proposal is either consistent or inconsistent with the plan, or

(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969,

(B) publish notice of the decision in the Federal Register, and

(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the Federal Register, whichever is later.

(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

(d) The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 4(e)(1) and the considerations of section 4(e)(2) but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(e)(1) In order to effectuate the priority given to conservation measures and renewable resources under this Act, the Administrator shall, to the maximum extent practicable, make use of his authorities under this Act to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, ex-

penses incurred during the investigation and preconstruction of resources, as authorized in subsection (f) of this section).

(2) To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

(f)(1) For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of—

(A) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

(B) any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

In the case of any resource referred to in subparagraph (B) of this paragraph, such reimbursement is authorized only if—

(i) such resource is subsequently denied State siting approval or other necessary Federal or State permits, or approvals,

(ii) such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or is not acceptable because of environmental impacts, or

(iii) after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

(2) The Administrator may exercise the authority of this subsection only after he determines that the failure to do so would result in inequitable hardship to the consumers of such sponsors. The Administrator may provide reimbursement under this subsection only for expenses incurred after the date of the enactment of this Act.

(3) Any agreement under paragraph (1) of this subsection shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

(4) The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State siting approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(g) At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h)(1) If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for—

(A) conservation activities independently undertaken or continued after the effective date of this Act by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this Act, or

(B) resources constructed, completed, or acquired after the effective date of this Act by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this Act. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act.

(2) The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

(3) The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

(4) For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

(5) Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

(6) Prior to granting any credit or providing services pursuant to this subsection, the Administrator shall—

(A) comply with the notice provisions of subsection (c) of this section, and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;

(B) include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838(j));

(C) require that resources in excess of customer's reasonable load growth shall have been offered to others for ownership, participation or other sponsorship pursuant to subsection (m) of this section, except in the case of conservation, multi-purpose projects

uniquely suitable for development by the customer, or renewable resources; and

(D) require that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.

(i) Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will—

(1) insure timely construction, scheduling, completion, and operation of resources,

(2) insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices, and (B) the protection, mitigation, and enhancement of fish and wildlife, including related spawning grounds and habitat affected by the development of such resources, and

(3) insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation.

Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs of, and proposals for, major modifications in construction, scheduling or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

(j)(1) All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services.

Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

(2) All contracts entered into by the Administrator for the acquisition of resources pursuant to this Act shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1) of this subsection. The Administrator shall monitor and enforce such requirement.

(k) In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

(1)(1) The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.

(2) The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in

the Pacific Northwest and the regions with which such exchanges may occur. The Council shall take into consideration in formulating a plan such investigations.

(3) After the Administrator submits a report to Congress pursuant to paragraph (5) of this subsection, the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2). Such acquisitions shall be in accordance with the provisions of this subsection.

(4) The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

(5) No later than July 1, 1981, the Administrator shall submit to the Congress a report of the results of the investigations undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.

(m) Except as to resources under construction on the effective date of this Act, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's Regional load.

RATES

SECTION 7. (a)(1) The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be

established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

(2) Rates established under this section shall become effective only, except in the case of interim rules as provided in subsection (i) (6), upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

(A) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs.

(B) are based upon the Administrator's total system costs, and

(C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.

(b)(1) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. There-

after, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources.

(2) After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that—

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

(i) served by the Administrator, and

(ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A) of this paragraph;

(C) no purchases or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining gen-

eral requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were—

(i) purchased from such customers by the Administrator pursuant to section 6, or

(ii) not committed to load pursuant to section 5(b),

and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from—

(i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and

(ii) reserve benefits as a result of the Administrator's actions under this Act

were not achieved.

(3) Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) of this subsection shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by—

(A) a difference between actual power deliveries and power deliveries projected for the purpose of

establishing rates to direct service industrial customers under subsection (c)(1) of this subsection, and

(B) an overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

(4) The term "general requirements" as used in this section means the public body, cooperative or Federal agency customer's electric power purchased from the Administrator under section 5(b) of this Act, exclusive of any new large single load.

(c)(1) The rate or rates applicable to direct service industrial customers shall be established—

(A) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(c) of this Act, based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

(B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

(2) The determination under paragraph (1)(B) of this subsection shall be based upon the Administrator's appli-

cable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account—

(A) the comparative size and character of the loads served,

(B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

(C) direct and indirect overhead costs,

all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

(3) The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail services to such direct service industrial customers.

(d)(1) In order to avoid adverse impacts on retail rates of the Administrator's customers with low system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

(2) In order to avoid adverse impacts of increased rates pursuant to this Act on any direct service industrial customer using raw minerals indigenous to the region as its primary resource, the Administrator, upon request of such customer showing such impacts and after considering the effect of such request on his other obligations under this Act, is authorized, if the Administrator determines that such impacts will be significant, to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region. Such rate shall be established in

accordance with this section and shall include such terms and conditions as the Administrator deems appropriate.

(e) Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

(f) Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c) of this Act and additional resources which, in the determination of the Administrator, are applicable to such sales.

(g) Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on the effective date of this Act, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this Act, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) Notwithstanding any other provision of this section (except the provisions of subsection (a) of this section), the Administrator shall adjust power rates to include any surcharges arising under section 4(f) of this Act, and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 4(f) of this Act.

(i) In establishing rates under this section, the Administrator shall use the following procedures:

(1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice

shall include a date for a hearing in accordance with paragraph (2) of this subsection.

(2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—

(A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

(B) the hearing officer, in his discretion, shall allow a reasonable opportunity for cross examination, which, as determined by the hearing officer, is not dilatory, in order to develop information and material relevant to any such proposed rate.

(3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before the close of, hearings shall be made a part of the administrative record.

(4) After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

(5) The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

(6) The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission

pursuant to subsection (a)(2) of this section. The Commission shall have the authority, in accordance with such procedures, if any, as the Commission shall promptly establish and make effective within one year after the enactment of this Act, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection. Pending the establishment of such procedures by the Commission, if such procedures are required, the Secretary is authorized to approve such interim rates during such one-year period in accordance with the applicable procedures followed by the Secretary prior to the effective date of this Act. Such interim rates, at the discretion of the Secretary, shall continue in effect until July 1, 1982.

(j) All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate—

(1) the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

(2) the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

(k) Notwithstanding any other provision of this Act, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after the date of this Act by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Notwithstanding section 201(f) of the Federal Power Act, such rates or rate schedules shall become effective after review by the Federal

Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) of this section. The parties to such proceedings under subsection (i) shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(l) In order to further the purposes of this Act and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than the rates established under this Act for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

(m)(1) Beginning the first fiscal year after the plan and program required by section 4(d) and (h) of this Act are finally adopted, the Administrator may, subject to the provisions of this section, make annual impact aid payments to the appropriate local governments within the region with respect to major transmission facilities of the Administrator, as defined in section 3(c) of the Federal Columbia River Transmission Act—

(A) which are located within the jurisdictional boundaries of such governments,

(B) which are determined by the Administrator to have a substantial impact on such governments, and

(C) where the construction of such facilities, or any modification thereof, is completed after the effective date of this Act, and, in the case of a modification of an existing facility, such modification substantially increases the capacity of such existing transmission facility.

(2) Payments made under this subsection for any fiscal year shall be determined by the Administrator pursuant to a regionwide, uniform formula to be established by rule in accordance with the procedures set forth in subsection (i) of this section. Such rule shall become effective on its approval, after considering its effect on rates established pursuant to this section, by the Federal Energy Regulatory Commission. In developing such formula, the Administrator shall identify, and take into account, the local governmental services provided to the Administrator concerning such facilities and the associated costs to such governments as the result of such facilities.

(3) Payments made pursuant to this subsection shall be made solely from the fund established by section 11 of the Federal Columbia River Transmission System Act. The provisions of section 13 of such Act, and any appropriations provided to the Administrator under any law, shall not be available for such payments. The authorization of payments under this subsection shall not be construed as an obligation of the United States.

(4) No payment may be made under this subsection with respect to any land or interests in land owned by the United States within the region and administered by any Federal agency (other than the Administrator), without regard to how the United States obtained ownership thereof, including lands or interests therein acquired or withdrawn by a Federal agency for purposes of such agency

and subsequently made available to the Administrator for such facilities.

AMENDMENTS TO EXISTING LAW

SECTION 8. (a) Section 11(b) of the Federal Columbia River Transmission System Act is amended by striking out "or" before "(iii)" in paragraph (6), by striking out the semicolon at the end of such paragraph (6) and inserting in lieu thereof ", or (iv) on a short term basis to meet the Administrator's obligations under section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act;".

(b) Section 11(b) of the Federal Columbia River Transmission System Act is amended by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and ", and by adding at the end thereof the following new paragraph:

"(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act".

(c) Subsection (b) of section 13 of such Act is amended by striking out "and 11(b)(11)" and inserting in lieu thereof ", 11(b)(11), and 11(b)(12)".

(d)(1) The first sentence of subsection (a) of section 13 of such Act is amended by inserting after the word "system," the following: "to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from a generating facility having a planned capability greater than 50 average megawatts);".

(2) The fourth sentence of such subsection (a) is amended by inserting the following before the period at the end thereof: "issued by Government corporations".

(3) Such subsection (a) is further amended by inserting the following before the period at the end thereof: "prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional \$1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds".

(4) Such subsection (a) is further amended by inserting the following after the fourth sentence thereof: "Beginning in fiscal year 1982, if the Administrator fails to repay by the end of any fiscal year all of the amounts projected immediately prior to such year to be repaid to the Treasury by the end of such year under the repayment criteria of the Secretary of Energy and if such failure is due to reasons other than (A) a decrease in power sale revenues due to fluctuating streamflows or (M) other reasons beyond the control of the Administrator, the Secretary of the Treasury may increase the interest rate applicable to the outstanding bonds issued by the Administrator during such fiscal year. Such increase shall be effective commencing with the fiscal year immediately following the fiscal year during which such failure occurred and shall not exceed 1 per centum for each such fiscal year during which such repayments are not in accord with such criteria. The Secretary of the Treasury shall take into account amounts that the Administrator has repaid in advance of any repayment criteria in determining whether to increase such rate. Before such rate is increased, the Secretary of the Treasury, in consultation with the Administrator and the

Federal Energy Regulatory Commission, must be satisfied that the Administrator will have the ability to pay such increased rate, taking into account the Administrator's obligations. Such increase shall terminate with the fiscal year in which repayments (including repayments of the increased rate) are in accordance with the repayment criteria of the Secretary of Energy."

(e) Clause (2) of section 1(b) of the Act of August 31, 1964 (78 Stat. 756) is amended to read as follows: "(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region."

ADMINISTRATIVE PROVISIONS

SECTION 9. (a) Subject to the provisions of this Act, the Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)). Other provisions of law applicable to such contracts on the effective date of this Act shall continue to be applicable.

(b) The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), section 302(a) (2) and (3) of the Department of Energy Organization Act, and this Act. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this Act in a sound and businesslike manner. Nothing in this Act shall be construed by the Secretary, the Administrator, or any other official of the Department of Energy to modify, alter, or otherwise affect the requirements and directives expressed

by the Congress in section 302(a) (2) and (3) of the Department of Energy Organization Act or the operations of such officials as they existed prior to enactment of this Act.

(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this Act. The Administrator shall, in making any determination, under any contract executed pursuant to section 5, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that

through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

(d) No restrictions contained in subsection (c) shall limit or interfere with the sale, exchange or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. In addition to the directives contained in subsections (i)(1)(B) and (i)(3) and subject to:

- (1) any contractual obligations of the Administrator,
- (2) any other obligations under existing law, and
- (3) the availability of capacity in the Federal transmission system,

the Administrator shall provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and shall not discriminate against any utility or group thereof on the basis of independent development of such resource in providing such services.

(e)(1) For purposes of sections 701 through 706 of title 5, United States Code, the following actions shall be final actions subject to judicial review—

(A) adoption of the plan or amendments thereto by the Council under section 4, adoption of the program by the Council, and any determination by the Council under section 4(h);

(B) sales, exchanges, and purchases of electric power under section 5;

(C) the Administrator's acquisition of resources under section 6;

(D) implementation of conservation measures under section 6;

(E) execution of contracts for assistance to sponsors under section 6(f);

(F) granting of credits under section 6(h);

(G) final rate determinations under section 7; and

(H) any rule prescribed by the Administrator under section 7(m)(2) of this Act.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this Act. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, United States Code, except that final determinations regarding rates under section 7 shall be supported by substantial evidence in the rulemaking record required by section 7(i) considered as a whole. The scope of review of an action under section 6(c) shall be governed by section 706 of title 5, United States Code. Nothing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5 of the United States Code.

(3) Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

(4) For purposes of this subsection—

(A) major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 6(c)(4)(B);

(B) resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

(C) conservation measures shall be deemed to be implemented upon execution of the contract or grant therefor; and

(D) rate determinations pursuant to section 7 shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

(5) Suits to challenge the constitutionality of this Act, or any action thereunder, final actions and decisions taken pursuant to this Act by the Administrator or the Council, or the implementation of such final actions, whether brought pursuant to this Act, the Bonneville Project Act, the Act of August 31, 1964 (16 U.S.C. 837-837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the United States court of appeals for the region. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this Act to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or programs or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such court shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan and program, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this Act or any other law. Suits challenging any other actions under this Act shall be filed in the appropriate court.

(f) For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provided in section 103(a)(1) of the Internal Revenue Code of 1954 shall not be affected by the Administrator's acquisition of such resources if—

(1) the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this Act are public bodies, cooperatives, and Federal agencies,

unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of such Code), and

(2) based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of such Code).

The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

(g) When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under section 5(c) or 6, the Federal Energy Regulatory Commission shall, in accordance with section 209 of the Federal Power Act (16 U.S.C. 824h)—

(1) convene a joint State board, and

(2) invest such board with such duties and authority as will assist the Commission in its review of such rates.

(h)(1) No "company" (as defined in section 2(a)(2) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(2)), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(3)), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code, if at least 90 per

centum of the electricity generated by such company is sold to the Administrator under section 6, and if—

(A) the organization of such company is consistent with the policies of section 1 (b) and (c) of the Public Utility Holding Company Act of 1935, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

(B) participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 6(m).

(2) The Administrator shall include in any contract for the acquisition of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

(3) In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policies of section 1(b) and (c) of the Public Utility Holding Company Act of 1935 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

(4) Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the "company" no longer operates in a manner consistent with the policies of section 1 (b) and (c) of the Public Utility Hold-

ing Company Act of 1935 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

(i)(1) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

(A) acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 5(b), or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

(B) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable laws.

(2) In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for

the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

(3) The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year.

(j)(1) The Council, as soon as practicable after the enactment of this Act, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

(2) Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under

section 6(h) that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

(k) There is hereby established within the administration an executive position for conservation and renewable resources. Such executive shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.

SAVINGS PROVISIONS

SECTION 10. (a) Nothing in this Act shall be construed to affect or modify any right of any state or political subdivision thereof or electric utility to—

(1) determine retail electric rates, except as provided by section 5(c)(3);

(2) develop and implement plans and programs for the conservation, development, and use of resources; or

(3) make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) Nothing in this Act shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of the effective date of this Act.

(c) Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to pref-

erence and priority in the sale of federally generated electric power.

(d) If any provision of this Act is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 5, and section 6(a), (f) or (h) of this Act shall not be affected by such finding.

(e) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(f) The reservation under law of electric power primarily for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State is hereby affirmed. Such reservation shall also apply to 50 per centum of any electric power produced at Libby Reregulating Dam if built. Electric power so reserved shall be sold at the rate or rates set pursuant to section 7.

(g) Nothing in this Act shall be construed to affect or modify the right of any State to prohibit utilities regulated by the appropriate State regulatory body from recovering, through their retail rates, costs during any period of resource construction.

(h) Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act of any plan or program adopted pursuant to the Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United

States, Indian tribes, or any person with respect to any water or water-related right.

(i) Nothing in this Act shall be construed to affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law.

EFFECTIVE DATE

SECTION 11. This Act shall be effective on the date of enactment, or October 1, 1980, whichever is later. For purposes of this Act, the term "date of the enactment of this Act" means such date of enactment or October 1, 1980, whichever is later.

SEVERABILITY

SECTION 12. If any provision of section 4(a) through (c) of this Act or any other provision of this Act or the application thereof to any person, State, Indian tribe, entity, or circumstance is held invalid, neither the remainder of section 4 or any other provisions of this Act, nor the application of such provisions to other persons, States, Indian tribes, entities, or circumstances, shall be affected thereby.

Approved December 5, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-976, Pt. I (Comm. on Interstate and Foreign Commerce), and No. 96-976, Pt. II (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-272 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 125 (1979): Aug. 3, considered and passed Senate.

Vol. 126 (1980): Sept. 24, 29, Nov. 12-14, 17, considered and passed House, amended, in lieu of H.R. 8157.

Nov. 19, Senate concurred in House amendment.

Appendix C

CONGRESSIONAL RECORD—SENATE

August 3, 1979 (daily ed.)

Page S 11592

Mr. HATFIELD. Mr. President, I commend the chairman (Mr. Jackson) and my Northwest colleagues on the committee, the Senators from Idaho (Mr. Church and Mr. McClure) and Montana (Mr. Melcher), for lending their tremendous efforts to the fashioning of this most remarkable piece of legislation.

Without any doubt, I predict it will be viewed in the future as the most important bill ever to have affected the Pacific Northwest. Certainly not since the Federal decision to build Bonneville Dam have we considered anything with such profound long-range impact on the region as we are considering today.

We owe special recognition today to the willingness of the many interest groups of the Northwest to bury old differences and historic animosities and work cooperatively toward a regional solution to our electric power problems. Public power, private power, the direct service industries, the four Governors, the cities of Seattle and Portland, and several environmental and consumer organizations provided the needed thread to weave this complex fabric. We also owe thanks to the personnel at Bonneville Power Administration who provided the necessary backup for the negotiations that have taken place, and who worked tirelessly on endless details when less capable and less dedicated people would have given out. I am particularly appreciative of the work of Mr. Earl Gjælde and Mr. Larry Hittle of Administrator Sterling Munro's staff.

Appendix D

96TH CONGRESS HOUSE OF REPRESENTATIVES REPT. 96-976
2d Session Part I

**PACIFIC NORTHWEST ELECTRIC POWER
AND PLANNING CONSERVATION ACT**

MAY 15, 1980. — Ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and
Foreign Commerce, submitted the following

R E P O R T

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany S. 885 which on September 5, 1979, was
jointly referred to the Committee on Interstate and
Foreign Commerce and the Committee on Interior and
Insular Affairs.]

[Including Cost Estimate of the Congressional
Budget Office]

The Committee on Interstate and Foreign Commerce, to
whom was referred the bill (S. 885) to assist the electrical
consumers of the Pacific Northwest through use of the
Federal Columbia River Power System to achieve cost-
effective energy conservation, to encourage the development
of renewable energy resources, to establish a representa-
tive regional power planning process, to assure the region
of an efficient and adequate power supply, and for other
purposes, having considered the same, report favorably
thereon with an amendment and recommends that the bill
as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act."

TABLE OF CONTENTS

- Section 1. Short title and table of contents.
- Section 2. Purposes.
- Section 3. Definitions.
- Section 4. Regional planning and participation.
- Section 5. Sale of power.
- Section 6. Conservation and resource acquisition.
- Section 7. Rates.
- Section 8. Amendments to existing law.
- Section 9. Administrative provisions.
- Section 10. Savings provisions.

PURPOSES

SECTION 2. The purposes of this Act are —

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System, conservation and efficiency in the use of electric power and the development of renewable resources within the Pacific Northwest and to assure the Pacific Northwest an adequate, efficient and reliable power supply consistent with applicable environmental and other provisions of law;

(2) to provide for the participation and consultation of the Pacific Northwest States, local governments,

consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in the development of regional plans and programs related to energy conservation, renewable resources, other resources, and the protection, mitigation, and enhancement of fish and wildlife resources and in the orderly planning of the Federal Columbia River Power System;

(3) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization of the Federal investment in the Federal Columbia River Power System;

(4) to insure, subject to the provisions of this Act —

(A) that the authorities and responsibilities of State and local governments, electric utility systems, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources to achieve conservation, without regard to this Act; and

(5) to protect, mitigate, and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well being of the Pacific Northwest and the Nation and which are de-

pendent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other facilities on the Columbia River and its tributaries.

DEFINITIONS

SECTION 3. As used in this Act, the term —

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast —

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs, and such quanti-

fiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) "Consumer" means any end user of electric power.

(6) "Council" means, unless otherwise specifically provided, the voting members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established by this Act.

(7) "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this Act.

(8) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) "Electric power" means electric peaking capacity, or electric energy, or both.

(10) "Federal base system resources" means —

(A) the Federal Columbia River Power System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on the effective date of this Act; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B).

(11) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is located in whole or in part in the region and which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status.

(12) "Members of the council" means only the voting members of the council.

(13) "Major resource" means any resource having a planned capability greater than fifty average megawatts, other than electric power acquired by purchase by the Administrator for a period of five years or less pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act.

(14) "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility —

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, or Federal agency customer prior to October 1, 1978, in the case of industrial loads, or September 1, 1979, in the case of other than industrial loads, and

(B) which will result in an increase in power requirements of ten average megawatts or more in any consecutive twelve-month period.

(15) "Pacific Northwest", "region", or "regional" means —

(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

(16) "Plan" means the Regional Electric Power and Conservation plan adopted pursuant to this Act and such plan shall apply to actions of the Administrator as specified in this Act.

(17) "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(18) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator (A) from resources or (B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract

provisions, portions of the electric power supplied to customers.

(19) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first two hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(20) "Resource" means —

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(21) "Secretary" means the Secretary of Energy.

REGIONAL PLANNING AND PARTICIPATION

Section 4. (a) (1) There is established the "Pacific Northwest Electric Power and Conservation Planning Council" which shall have its offices in the Pacific Northwest. The Council shall be composed of eleven voting members selected as follows:

(A) four from the State of Washington,

(B) three from the State of Oregon,

(C) two from the State of Idaho, and

(D) two from the State of Montana.

(2) As soon as practicable, but not more than forty-five days after the effective date of this Act and thereafter within forty-five days after a vacancy occurs, the Governor of the States of Washington, Oregon, Idaho, and Montana may each (under applicable State laws, if any) provide to the Secretary a list of nominations from such State for each

of the State's positions to be selected for the Council. The list shall include at least two persons for each such position. The list shall include such information about such nominees as the Secretary may request. The Secretary shall appoint the Council members from each Governor's list of nominations for each State's positions. The Secretary may decline to appoint for any reason any of a Governor's nominees for a position and shall notify the Governor, whereupon the Governor may make successive nominations within forty-five days of receipt of such notice until nominees, acceptable to the Secretary, are appointed for each position. In the event the Governor of any such State fails to make the required nominations for any State position on the Council within the time specified for such nominations (which time may be extended by the Secretary in his discretion), the Secretary shall select and appoint the Council member or members from such State for such position.

(3) The members of the Council shall serve for a term of three years, except that, with respect to members initially appointed, the Secretary shall designate four members thereof to serve a term of two years, four members thereof to serve a term of three years, and the remaining three such members to serve for a term of four years. Successive members of the Council shall be nominated and appointed in the same manner as the original members. Any person appointed to fill a Council vacancy occurring prior to the expiration of the term of such office shall be appointed for the remainder of that term.

(4) The Administrator shall be an ex officio, nonvoting member of the Council. The Secretary shall also appoint as ex officio nonvoting members such other Federal officials as he determines appropriate to the Council who have responsibilities for the Federal Columbia River Power System hydroelectric projects and for the fish and wildlife affected by such System. The Secretary may also appoint persons from the general public as nonvoting members of the Council.

(5) The voting members of the Council who are not employed by the United States or a State shall receive compensation at a rate equal to the rate prescribed for offices and positions at level GS-18 of the General Schedule for each day such members are engaged in the actual performance of duties as members of the Council, except that no such member may be paid more in any calendar year than an officer or employee at step 1 of level GS-18 is paid during such year. Members of the Council shall be considered officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.). The voting members of the Council shall also be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(6) A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this Act, all actions and decisions of the Council shall be by majority vote of the voting members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of a majority of the voting members appointed to the Council, including the vote of at least one member from each State.

(7) The members of the Council shall select a Chairman for the Council. The Council shall meet at the call of the Chairman or upon the request of a majority of the members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.

(8) The Council shall appoint, and assign duties to, an executive director who shall serve at the pleasure of the Council and who shall be compensated at the rate estab-

lished for GS-18 of the General Schedule. The executive director shall exercise the powers and duties delegated to such director by the Council, including the power to appoint and fix compensation of additional personnel in accordance with applicable Federal law to carry out the functions of the Council.

(9) Upon request of the Council, the head of any Federal agency is authorized to detail to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this Act.

(10) To obtain such information and advice as the Council determines to be necessary or appropriate to carry out the purposes of this Act, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator with particular expertise and from other bodies or organizations in the region. The Council is authorized to enter into contracts in accordance with provisions of law applicable to the Department of Energy.

(11) At the Council's request, the Administrator of the General Services shall furnish the Council with such offices, equipment, supplies, and services in the same manner and to the same extent as such Administrator is authorized to furnish to any other agency or instrumentality of the United States such offices, supplies, equipment, and services.

(12) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions under this Act. The Council shall publish in the Federal Register and make available to the public a statement of its organization, practices, and procedures, and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.

(13) The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Coun-

cil as necessary for the performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

(14)(A) At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this Act and as the Council determines are necessary or appropriate for the performance of its functions. Funds for such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d). Such funds shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

(B) Notwithstanding the limitation contained in the third sentence of subparagraph (A), upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions under this Act, the Administrator may raise such limit up to any amount not in excess of 0.10 mills.

(b) The Council shall, subject to applicable law, establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

(c) The Council may, subject to applicable law, establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions under this Act.

(d) Within two years after the effective date of this Act, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, United States Code and such procedures as the Council shall adopt.

(e)(1) The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost-effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

(2) The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 of this Act to reduce or meet the Administrator's obligations with due consideration by the Council for (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

(3) To accomplish the priorities established by this subsection, the plan shall include, but not be limited to, the following elements:

(A) an energy conservation program to be implemented under this Act including, but not limited to, model conservation standards;

(B) recommendations for research and development;

(C) a methodology for determining quantifiable environmental costs and benefits under section 3(4);

(D) a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) which forecast (i) shall include regional reliability and reserve requirements and (ii) may include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long term basis and the types of resources from which such power should be acquired;

(E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to ensure adequate electric power at the lowest probable cost; and

(F) if the Council recommends surcharges pursuant to subsection (f), a methodology for calculating such surcharges.

(f)(1) Model conservation standards to be included in the plan shall include, but not limited to, standards applicable to (A) new and existing structures, (B) utility, cus-

tomers, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are economically feasible for consumers, taking into account financial assistance made available to consumers under section 6(a) of this Act. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

(2) The Council by a majority vote of the members of the Council is authorized to recommend to the Administrator a surcharge and the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures applicable to such customers that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

(g) To ensure widespread public involvement in the formulation of regional power policies, the Council and the Administrator shall maintain comprehensive programs to inform the Pacific Northwest public of major regional power issues, to obtain public views concerning those issues, and

to secure advice and consultation from the Administrator's customers and others.

(h)(1) The Council shall request in writing promptly after the effective date of this Act and prior to the development of a plan or any amendment thereto from the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes recommendations for —

(A) measures to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries, including recommendations for achieving sufficient quantities and quality of flows for successful migration, survival, and propagation and anadromous fish, and

(B) fish and wildlife research and development which, among other things, will provide improved passage and survival for anadromous fish at and between the Region's hydroelectric dams.

Such agencies and tribes shall respond within ninety days of such request from the Council. The Council may extend the time for making such recommendations. All recommendations made pursuant to this subsection shall include detailed data in support of such recommendations. The Council shall give notice of all such recommendations and make available such recommendations and data to the Administrator and the public. Copies shall be provided subject to payment of reasonable costs of reproduction. Water management agencies, electric power producing agencies, customers, and the public may also submit written views and comments on such recommendations and also make written recommendations within such time as the Council shall provide. The Council may hold public hearings on the recommendations of such agencies and tribes, together with any other written recommendations provided to the Council. If thereafter the Council determines that such recommendations of such fish and wildlife agencies

and tribes are not inconsistent with the purposes of this Act, the Council shall adopt such recommendations. The Council may also adopt such other recommendations as the Council determines are consistent with such purposes. Nothing in this paragraph shall prevent the Council from modifying such recommendations in consultation with such fish and wildlife agencies and tribes and others. Any such determination, and the reason therefor, shall be set forth in writing and published and shall be subject to the provisions of section 9(d).

(2) The Administrator shall —

(A) utilize the Bonneville Power Administration fund, and

(B) the authorities available to the Administrator under this Act and other laws administered by the Administrator

to protect, mitigate, and enhance the fish and wildlife affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan and the purposes of this Act, including the recommendations adopted pursuant to paragraph (1). The Administrator may make expenditures from such fund for such purposes which shall have been included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(3) The Administrator and other Federal agencies responsible for the management or operation or regulation of the Federal Columbia River Power System hydroelectric projects or the hydroelectric facilities of any customer or any other electric utility located on the Columbia River or its tributaries shall exercise such responsibilities, consistent with the purposes of this Act, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment, for such fish and wildlife with the other purposes for which such

system and facilities are managed and operated or regulated under other provisions of law.

(4) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region and appropriate Indian tribes in carrying out the provisions of this subsection.

(5) Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Interstate and Foreign Commerce and on Interior and Insular Affairs of the House of Representatives on the actions taken and to be taken by the Council under this section, including this subsection. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof. The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this Act, including this subsection.

(i)(1) Following adoption of the plan and any amendment thereto, all actions of the Administrator pursuant to section 6 shall be consistent with the plan and any amendment thereto, except as otherwise specifically provided.

(2)(A) Except in the case of major resources subject to the procedures of section 6(c), the Council shall give notice to the Administrator of the types of actions under section 6 to be reviewed for consistency with the plan and may, from time to time, amend such notice.

(B) Whenever a proposed action by the Administrator under section 6 is of a type designated for review by the Council, the Administrator shall make the initial determi-

nation whether such action is consistent with the plan and, if the Administrator determines the action is consistent, so advise the Council at least sixty days prior to taking the proposed action.

(C) Within sixty days after notice of the Administrator's determination, the Council may direct the Administrator to hold a hearing in accordance with the applicable procedures of paragraphs (2), (3), and (5) of section 7(i). Upon completion of such hearing, the Administrator shall make a final determination whether or not such action is consistent with the plan.

(D) If the Council fails within the time provided to direct the Administrator to hold a hearing pursuant to subparagraph (C), the Council shall be deemed to have found the proposed action consistent with the plan.

(j)(1) The Council may request the Administrator to take an action under section 6 to carry out the Administrator's responsibilities under the plan.

(2) Within ninety days after the Council's request, the Administrator shall respond to the Council in writing specifying —

(A) the means by which the Administrator will undertake the action or any modification thereof requested by the Council, or

(B) the reasons why such action would not be consistent with the plan, or with the Administrator's legal obligations under this Act, or other provisions of law, which the Administrator shall specifically identify.

(3) If the Administrator determines not to undertake the requested action, the Council, within sixty days after notice of the Administrator's determination, may direct the Administrator to hold a hearing in accordance with the applicable procedures of paragraphs (2), (3), and (5) of section 7(i).

(4) The Administrator's final determination upon completion of such hearing shall be based on substantial evidence.

(k) In carrying out the provisions of this section, the Council and the Administrator shall —

(1) consult with the Administrator's customers;

(2) include the comments of such customers in the record of the Council's proceedings; and

(3) recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

(l) In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such entities, tribes and subdivisions individually, in groups, or through associations thereof to (1) investigate possible measures to be included in the plan, (2) provide public involvement and information regarding a proposed plan or amendment thereto, and (3) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council may be incorporated as part of the plan.

(ii)(1) Not later than October 1, 1986, the Council shall complete a thorough analysis of conservation measures implemented and renewable resources acquired pursuant to this Act during the five-year period beginning on the date of the enactment of this Act to determine if such measures or resources:

(A) have resulted or are likely to result in costs to consumers in the region greater than the costs of additional generating resources or additional fuel which the Council determines would be necessary in the absence of such measures or resources;

(B) have not been or are likely not to be generally equitable to all consumers in the region; or

(C) have impaired or are likely to impair the ability of the Administrator to carry out his obligations under this Act and other laws, consistent with sound business practices.

(2) The Administrator may determine that section 3(4) (D) shall cease to be effective for any conservation measure or renewable resource if the Administrator finds after receipt of such analysis from the Council that such measure or resource has any result or effect described in paragraph (A), (B) or (C).

SALE OF POWER

Section 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such

public body, cooperative or investor-owned utility in the Region to the extent that such firm power load exceeds —

(A) the capability of such entity's firm resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2) Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this Act, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of in-

sufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

(6) Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall —

(A) provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

(B) not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

(C) contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of the effective date of this Act, to be used to serve its own firm loads.

The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under paragraph (1) to be used to serve its firm load.

(c)(1) Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount

of electric power to such utility for resale to that utility's residential users within the region.

(2) The purchase and exchange sale referred to in paragraph (1) with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's Regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

(3) The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

(4) An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

(5) Subject to the provisions of sections 4 and 6, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1), the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

(6) Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric

power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

(7) The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include —

(A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility that was not contracted for, or committed to, as determined by the Administrator, prior to October 1, 1978, in the case of industrial loads, or September 1, 1979, in the case of other than industrial loads;

(B) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and

(C) any costs of any generating facility which is terminated prior to initial commercial operation.

For purposes of this paragraph, the term "new large single load" means any load which will result in an increase in power requirements of ten average megawatts or more in any consecutive twelve-month period.

(d)(1)(A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

(B) After the effective date of this Act, the Administrator shall offer in accordance with subsection (g) to each existing direct service industrial customer an initial long term contract that provides such customer an amount of

power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power."

(2) The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines that such proposed sale is consistent with the plan and that —

(A) additional power system reserves are required for the region's firm loads,

(B) the proposed sale would provide a cost-effective method of supplying such reserves,

(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the Region if served by an electric utility under contractual arrangements providing reserves, and

(D) the Administrator has or can acquire sufficient electric power to serve such loads, and

unless the Council has approved such sale by majority vote of the members of the Council. After such determination and approval, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

(4)(A) As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on the effective date of this Act.

(B) The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

(e)(1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

- (A) public bodies and cooperatives;
- (B) Federal agencies shall;
- (C) direct service industrial; and
- (D) investor owned utilities.

(2) Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 6 shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 6 shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

(3) The Administrator shall, consistent with the provisions of this Act, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) are distributed equitably throughout the region.

(f) The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsections (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).

(g)(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to —

(A) existing public body and cooperative customers and investor-owned utility customers under subsection (b);

(B) Federal agency customers under subsection (b);

(C) electric utility customers under subsection (c);
and

(D) direct service industrial customers under subsection (d)(1)(A).

(2) Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

(3) An initial contract with a public body, cooperative or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

(4) An initial contract with an electric utility customer pursuant to subsection (c) shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after the effective date of this Act.

(5) An initial contract with a direct service industrial customer pursuant to subsection (d)(1)(A), shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after the effective date of this Act. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

(6) Initial contracts offered public body, cooperative and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

(7) The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1)(A) through (D).

CONSERVATION AND RESOURCE ACQUISITION

SECTION 6. (a)(1) The Administrator shall acquire such resources, through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) and, in the case of major resources, in accordance with subsection (c). Such conservation measures and such resources may include, but are not limited to —

(A) loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

(B) technical and financial assistance to, and other cooperation with, the Administrator's customers and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of any cost-effective conservation objectives adopted by individual States or subdivisions thereof,

(C) aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 4(f), and

(D) conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

(2) If a plan is in effect, the Administrator shall acquire such resources through conservation and use of renewable resources and implement such conservation measures which are referred to in paragraph (1) as he determines to be consistent with the plan and, in the case of major resources, in accordance with subsection (c).

(3) In addition to electric power acquired on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), the Administrator shall meet his contractual obligations that remain after taking into account planned savings from conservation and conservation measures as provided in this subsection by acquiring sufficient resources.

(b)(1) Except as specifically provided in this section, acquisition of resources under this Act shall be consistent with the plan, as determined by the Administrator.

(2) The Administrator may acquire resources under this Act which are not consistent with the plan, but which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of sec-

tion 4(e)(2). Such determinations are subject to the provisions of section 4(i).

(3) If no plan is in effect, the Administrator may acquire resources under this Act which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(4) The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section.

(5) Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to achieve conservation pursuant to subsection (a).

(c)(1) For each proposal under subsections (a), (f), (h), or (l) to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall —

(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other ma-

terials and information as may have been submitted to, or developed by, the Administrator; and

(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (f), (h), (l), or (m), as appropriate —

(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

In the case of subsection (f), such decision shall be treated as satisfying the requirements of subsection (f), if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

(2) Where a plan is in effect the Council may determine by a majority vote of all the members appointed to the Council, and notify the Administrator, that a proposal referred to in paragraph (1) is either consistent or inconsistent with the plan. If the Council fails to make such determination within sixty days after receipt of an Administrator's decision under paragraph (1)(D), the Council shall be deemed to have determined that the decision is consistent with the plan.

(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined by either the Administrator or the Council to be inconsistent with

the plan until the expenditure of funds for that purpose has been specifically authorized by Act of Congress.

(4) Before the Administrator implements any proposal referred to in paragraph (1) which has been determined to be consistent with the plan or with the criteria of section 4(e)(1) and the considerations of section 4(e)(2), the Administrator shall —

(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969,

(B) publish notice of the decision in the Federal Register, and

(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

The Administrator may not implement any such proposal until 90 days after the date on which such proposal has been noted in such budget.

(d) The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 4(e)(1) and the considerations of section 4(e)(2) but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(e)(1) In order to effectuate the priority given to conservation measures and renewable resources under this

Act, the Administrator shall, to the maximum extent practicable, make use of his authorities under this Act to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f)).

(2) To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

(f)(1) For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of —

(A) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

(B) any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

In the case of any resource referred to in subparagraph (B), such reimbursement is authorized only if, for unforeseeable reasons —

(i) such resource is subsequently denied State siting approval or other necessary Federal or State permits, or approvals,

(ii) such investigation subsequently demonstrates, as determined by the Administrator, that such resource

does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or is not acceptable because of environmental impacts, or

(iii) after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

(2) The Administrator may exercise the authority of this subsection only after he determines that the failure to do so would result in extreme or unusual hardship. The Administrator may provide reimbursement under this subsection only for expenses incurred after the date of the enactment of this Act.

(3) Any agreement under paragraph (1) shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

(4) The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State siting approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(g) At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h)(1) If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for —

(A) conservation activities independently undertaken or continued after the effective date of this Act by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this Act, or

(B) resources constructed, completed, or acquired after the effective date of this Act by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this Act. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 4(e)(1) and the considerations of section 4 (e)(2).

(2) The Administrator may grant credits for resources other than resources referred to in paragraph (1) which reduce the obligation of the Administrator if he finds the granting of such credits would not be inconsistent with the plan, or if no plan is in effect, not inconsistent with the priorities of section 4(e)(1) and the considerations of section 4(e)(2).

(3) The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

(4) The amount of credits for conservation under this subsection shall be set to credit the customer implementing

or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

(5) For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

(6) Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

(7) Prior to granting any credit or services pursuant to this subsection, the Administrator shall notify the Council and his customers of the credit or services applied for, inform them of the methodology the Administrator proposes to use in determining the amount of any credit the Administrator may grant, and permit them a reasonable opportunity, consistent with the provisions of this Act, to evaluate and comment upon the credit and service proposal.

(i) Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions as will insure timely construction, scheduling, completion, and operation of resources, to insure that the costs of any acquisition are as low as reasonably possible, consistent with sound engineering, operating, and safety practices, and to insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation. Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs and proposals for major modifications in construction or in scheduling or in operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

(j)(1) All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

(2) All contracts entered into by the Administrator for the acquisition of resources pursuant to this Act shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1). The Administrator shall monitor and enforce such requirement.

(k) In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, con-

duct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

(1)(1) The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.

(2) The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may occur. The Council shall take into consideration in formulating a plan such investigations.

(3) After the Administrator submits a report to Congress pursuant to paragraph (5), the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2). Such acquisitions shall be in accordance with the provisions of this subsection.

(4) The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

(5) No later than July 1, 1981, the Administrator shall submit to the Congress a report of the results of the inves-

tigations undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.

(m) Except as to resources under construction on the effective date of this Act, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's Regional load.

RATES

Section 7. (a)(1) The Administrator shall establish and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act. (2) Rates established under this section shall become effective only upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates —

(A) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power

System over a reasonable number of years after first meeting the Administrator's other costs,

(B) are based upon the Administrator's total System costs, and

(C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.

(b)(1) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources.

(2) After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that —

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are —

(i) served by the Administrator, and

(ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A);

(C) no purchases or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B)) were

(i) purchased from such customers by the Administrator pursuant to section 6, or

(ii) not committed to load pursuant to section 5(b),

and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from —

(i) reduced public body and cooperative financing costs as applied to the total amount of re-

sources, other than Federal base system resources, identified under subparagraph (D), and

(ii) reserve benefits as a result of the Administrator's actions under this Act

were not achieved.

(3) Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by —

(A) a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1), and

(B) an overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

(4) The term "general requirements" as used in this section means the public body, cooperative or Federal agency customer's electric power purchased from the Administrator under section 5(b), exclusive of any new large single load.

(c)(1) The rate or rates applicable to direct service industrial customers shall be established —

(A) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to

recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(c), based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

(B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

(2) The determination under paragraph (1)(B) shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account —

(A) the comparative size and character of the loads served,

(B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

(C) direct and indirect overhead costs, all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

(3) The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

(d) In order to avoid adverse impacts on retail rates of the Administrator's customers with low system densities,

the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

(e) Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

(f) Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c) and additional resources which, in the determination of the Administrator, are applicable to such sales.

(g) Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on the effective date of this Act, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this Act, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) Notwithstanding any other provision of this section (except the provisions of subsection (a)), the Administrator shall adjust power rates to include any surcharges arising under section 4(f), and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 4(f).

(i) In establishing rates under this section, the Administrator shall use the following procedures:

(1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice

shall include a date for a hearing in accordance with paragraph (2).

(2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing —

(A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

(B) the hearing officer, in his discretion, may allow for cross-examination to develop information and material relevant to any such proposed rate.

(3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before, the close of hearings shall be made a part of the administrative record.

(4) After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

(5) The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

(6) The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2). The Commission shall

have the authority, in accordance with such procedures as the Commission may establish, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection.

(j) All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate —

(1) the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

(2) the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

(k) Notwithstanding any other provision of this Act, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after the date of this Act by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Notwithstanding section 201(f) of the Federal Power Act. Such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) and this subsection. The parties to such proceedings under subsection (i) shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(1) In order to further the purposes of this Act and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than the rates established under this Act for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

AMENDMENTS TO EXISTING LAW

Section 8. (a) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838) is amended by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act".

(b) Subsection (b) of section 13 of such Act is amended by striking out "and 11(b)(11)" and inserting in lieu thereof ", 11(b)(11), and 11(b)(12)".

(c)(1) The first sentence of subsection (a) of section 13 of such Act is amended by inserting after the word "system," the following: "to implement the Administrator's authority pursuant to the Pacific Northwest Electric

Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from a generating facility having a planned capability greater than 50 average megawatts),”.

(2) The fourth sentence of such subsection (a) is amended by inserting the following before the period at the end thereof: “issued by Government corporations”.

(3) Such subsection (a) is further amended by inserting the following before the period at the end thereof: “prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional \$1,250,000,000 after October 1, 1981, as provided in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds”.

(d) Clause (2) of section 1(b) of the Act of August 31, 1964 (78 Stat. 756) is amended to read as follows: “(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act, which has a distribution system from which it serves both within and without said region.”

ADMINISTRATIVE PROVISIONS

Section 9. (a) Subject to the provisions of this Act and other applicable provisions of law, the Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)).

(b) The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), sections 302(a)(2) and (3) of the Department of Energy Organization Act, and this Act. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this Act in a sound and businesslike manner.

(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this Act. The Administrator shall, in making any determination, under any contract executed pursuant to section 5, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such

amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

(d)(1) For purposes of sections 701 through 706 of title 5, United States Code, the following actions shall be final actions subject to judicial review —

(A) adoption of the plan or amendments thereto by the Council under section 4, and any determination by the Council under section 4(h);

(B) a decision by the Administrator under section 4(j);

(C) sales, exchanges, and purchases of electric power under section 5;

(D) the Administrator's acquisition of resources under section 6;

(E) implementation of conservation measures under section 6;

(F) execution of contracts for assistance to sponsors under section 6(f);

(G) granting of credits under section 6(h); and

(H) final rate determination under section 7.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this Act. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706, other than 706(2)(E) and (F), of title 5, United States Code, except that final determinations regarding rates un-

der section 7 shall be supported by substantial evidence in the rulemaking record required by section 7(i) considered as a whole. The scope of review of an action under section 6(c) shall be governed by section 706 of title 5, United States Code. Nothing in this section shall be construed to require a hearing pursuant to section 554 or 557 of title 5 of the United States Code.

(3) Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

(4) For purposes of this subsection —

(A) major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 6(c)(4)(B);

(B) resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

(C) conservation measures shall be deemed to be implemented upon execution of the contract or grant therefor; and

(D) rate determinations pursuant to section 7 shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

(5) Suits to challenge final actions and decisions taken pursuant to this Act, or the implementation of such final actions, whether brought pursuant to this Act, the Bonneville Project Act, the Act of August 31, 1964 (16 U.S.C. 837-837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the appropriate Federal court in the case of rates under section 7 and in the United States court of appeals for the region in the case of other actions or decisions subject to the provisions of this subsection. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this

Act to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such courts shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other section under this Act or any other law administered by the Administrator.

(e) For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provided in section 103(a)(1) of the Internal Revenue Code of 1954 shall not be affected by the Administrator's acquisition of such resources if —

(1) the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this Act are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of such Code), and

(2) based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of such Code).

The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury.

For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

(f) When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under sections 5(c) or 6, the Federal Energy Regulatory Commission shall, in accordance with section 209 of the Federal Power Act (16 U.S.C. 824h),

- (1) convene a joint State board and

- (2) invest such board with such duties and authority as will assist the Commission in its review of such rates.

(g)(1) No "company" (as defined in section 2(a)(2) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(2), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(3)), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code, if at least 90 per centum of the electricity generated by such company is sold to the Administrator under section 6, and if —

- (A) the organization of such company is consistent with the policies of the Public Utility Holding Company Act of 1935, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

- (B) participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 6(m), and

(2) The Administrator shall include in any contract for the acquisition of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator deter-

mines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

(3) In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policy of the Public Utility Holding Company Act of 1935 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

(4) Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the "company" no longer operates in a manner consistent with the policy of the Public Utility Holding Company Act of 1935 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

(h)(1) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable —

(A) acquire any electric power required by (i)
any customer or group of customers to enable them to

replace resources determined to serve firm load under section 5(b), or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

(B) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable laws.

(2) In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

(3) The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year.

(i)(1) The Council, as soon as practicable after the enactment of this Act, shall prepare, in consultation with

the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

(2) Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 6(h) that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

(j) There is hereby established within the administration an Assistant Administrator position for conservation and renewable resources. Such Assistant Administrator shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.

SAVINGS PROVISIONS

SECTION 10. (a) Nothing in this Act shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to —

(1) determine retail electric rates, except as provided by section 5(c)(3);

(2) develop and implement plans and programs for the conservation, development, and use of resources; or

(3) make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) Nothing in this Act shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of the effective date of this Act.

(c) Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

(d) If any provision of this Act is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 5, and section 6 (a), (f) or (h) of this Act shall not be affected by such finding.

(e) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

SECTION 11. This Act shall be effective on the date of enactment, or October 1, 1980, whichever is later. The term "date of enactment of this Act" as used in this Act shall be either such date or October 1, 1980.

BACKGROUND AND NEED

The Bonneville Power Administration (BPA) was established in 1937 by the Act of August 20, 1937, generally referred to as the Bonneville Project Act (16 U.S.C. 832, et seq.). Section 2(a) of the 1937 Act provides that the BPA shall dispose of electric energy generated in the operation of the Bonneville Project constructed and operated by the Corps of Engineers. Section 2(b) of the Act also states:

In order to encourage the widest possible use of all electric energy that can be generated and marketed and to provide reasonable outlets therefor, and to prevent the monopolization thereof by limited groups, the administrator is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, as he finds necessary, desirable, or appropriate for the purpose of transmitting electric energy, available for sale, from the Bonneville project to existing and potential markets, and for the purpose of interchange of electric energy, to interconnect the Bonneville project with other Federal projects and publicly-owned power systems now or hereafter constructed.

The Bonneville Act did not give BPA authority to construct any generation facilities. Instead, Congress authorized the Corps of Engineers and the then Bureau of Reclamation (now Water and Power Resources Service) to construct additional hydro projects in the Pacific Northwest.

Congress has since expanded the BPA statutory authority and responsibilities through the enactment of several other laws, such as Public Law 88-552 (16 U.S.C. 837; et seq.) and the Federal Columbia River Transmission System Act (16 U.S.C. 838, et seq.). The latter established a self-financing fund, called the Bonneville Power Administration fund, for the operation and maintenance of the Federal Columbia River Transmission system, as well as a number of other purposes.

BPA is the marketing agency of Federal hydroelectric power generated from a series of hydro projects built by the Corps of Engineers and the Bureau of Reclamation and located in the Pacific Northwest on the Columbia River and its tributaries. BPA markets this power wholesale to utilities and to direct service industrial customers. BPA's primary service area is the Pacific Northwest, which generally means the States of Oregon and Washington, that portion of Montana west of the Continental Divide, and portions of the States of Nevada, Utah, and Wyoming. This service area is statutorily established in Public Law 88-552 which provides a priority in the sale of BPA power for loads within the region. In marketing power generated at these Federal hydro projects, Congress provided that BPA is unequivocally obliged by statute to "give preference and priority to public bodies and cooperatives" which terms are defined in section 3 of the Bonneville Project Act. Such public bodies and cooperatives are known as "preference customers". S. 885, as amended by this Committee, does not alter in any way that Congressionally-established obligation and priority, nor does the committee intend that the legislation be construed to alter or modify that obligation and priority.

Until the early 1970's, there was a sufficient supply of Federal power to satisfy the net requirements of preference customers, various Federal agencies, investor-owned systems, and certain direct service industrial customers (DSI's). Until that time, the Pacific Northwest enjoyed ample supplies of electricity at very low prices. However, as projected demand began to exceed supplies, the Administrator announced that firm power sales to investor-owned utilities would cease in 1973. The region then began to realize the finite nature of the generating potential of the Columbia River System and the need to find an acceptable way to meet future electric energy demand. Adding to BPA's existing power supply was thought to be the most logical alternative.

However, BPA is not authorized by law to construct additional resources on its own. With sites for baseload hydro-projects essentially exhausted, BPA and the region's electric utilities initiated a hydro-thermal power program to meet future load growth by adding coal-fired and nuclear generating plants owned by non-Federal entities to the Federal system. BPA agreed to participate in paying for the publicly-owned portions of these powerplants through a net-billing arrangement with its preference customers, under which BPA preference customers (utilities participating in the actual construction of these plants) signed agreements which assigned or sold the plant's generating capability to BPA in return for a credit on the BPA charges for the power sales to that utility. Washington Public Power System (WPPSS) plants 1, 2 and 3, now under construction, are financed through the credit established in this way. However, in 1972, the Internal Revenue Service effectively prohibited additional net billed agreements by issuing a regulation denying tax exempt status for future municipal bonds to finance construction of plants whose capability is acquired by Federal agencies. The region then attempted an alternative program, sometimes called "Phase 2" of the hydro thermal program, whereby preference customers agreed to build their own new generation to meet load growth with BPA agreeing to provide the necessary reserves for those systems and serving the DSI's. For a number of reasons, including an unfavorable court decision, this alternative failed.

In June of 1976, BPA recognized that Federal power, including the "net billed" power, would be inadequate to meet the projected needs of its preference customers, and issued Notices of Insufficiency to these customers. This relieved BPA from liability for any failure to satisfy preference customer load growth after July 1, 1983. Similarly, BPA informed its direct service customers that their contracts expiring in the 1981-91 period were not likely to be renewed. In view of this inevitable shortfall in Federal

base resources and with no ability to add to its power supply, BPA began consideration of an administrative allocation so that each qualified customer could obtain an appropriate share of the available resources and plan to meet its needs accordingly.

More than anything else, it was probably the enormous increase in the cost of alternative resources that promises to make the process of allocating these resources so difficult and contentious. The region enjoys the lowest electric rates in the country. BPA is selling wholesale electricity at rates approximating 8 mills per kilowatt, or an equivalent of \$3/barrel oil (even after a recent 90 percent rate increase), whereas investments in thermal based alternative resources could now cost 10 times as much. Each claimant to the BPA supply in the Northwest is vigorously seeking a share of this invaluable resource. The preference customers claim that upon termination of the DSI contracts they are entitled to any power thus freed up. The DSI's are claiming that, if cut off from direct service, they are entitled to service similar to their current service from the appropriate local utility. Ten of the 15 DSI's are located in, or adjacent to, BPA preference customer service areas. These ten make up about 85 percent of the total DSI load.

At the same time, the States are looking for ways to qualify their residential customers for a share of these resources. In this respect, the State of Oregon has formed a "Domestic and Rural Power Authority" (DRPA) which has applied to BPA for an allocation of power. DRPA is intended to qualify as a preference customer in order to obtain low-cost power to serve all residential customers throughout the State. With the incentive becoming greater, more and more groups are considering the formation of new preference customers, among other reasons, for the purpose of qualifying for this power. With stakes so high, no claimant can afford not to attempt to secure an administrative allocation.

So long as this struggle continues (and it is only just beginning) utilities are unable to plan effectively for their future needs. The most important consequence of this failure is that despite certain distinguished programs for conservation, conservation opportunities are being ignored. The opportunity for conservation of electric power in the region is great. Kilowatts saved cost a small fraction of the cost of producing an equivalent amount of kilowatts. All concede that a vast potential for energy conservation is being wasted in the region.

As the costs of new generation have increased, the potential for cost-effective conservation programs in the region have also increased. Unfortunately, the region appears to lack mechanisms to undertake an effective regional conservation effort. BPA has limited authority to carry out conservation programs, and no authority to borrow or underwrite funds to finance these programs. Individual utilities (particularly publicly owned systems) face many legal and practical problems which limit their conservation efforts. Further, under current conditions it could be several years before many customers of BPA preference customers will face the kind of price signals that would encourage them to invest money in cost effective conservation measures.

Coupled with conservation's economic promise is the urgent need to conserve to ease the region's almost certain power shortages in the 1980's. Current forecasts indicate that the Northwest will experience massive power shortages during any critical water year in the next decade even if present construction schedules are met, and the likelihood is very great that those construction schedules will slip still further. Although it is too late to avert such shortages by building new thermal plants it is not too late to reduce the incidence and duration of such shortages through conservation. In the absence of a coordinated regional power program, it is probable that conservation efforts in the region will be too slow, too scattered, and

too modest to be effective; and the region would thus lose a good portion of conservation's potential economic benefits.

The region has turned to the Congress to assist in two requests: (1) the question as to which customers obtain what share of these low-cost Federal resources and (2) to authorize BPA to play a central role in helping to determine how the future electric power needs of this region will be met. The various legislative proposals have involved an expansion of the authority of the Bonneville Power Administration to permit the Administrator to acquire or purchase additional power on a long-term basis. BPA now supplies over half of the electricity to this region on a wholesale basis and maintains the integrated power grid that tends to distinguish this region from others. A grant of additional authority to this agency was generally accepted as the most sensible solution to the region's planning problem and far more acceptable than the alternative of contentious litigation and what the Governor of Washington described as a "regional civil war" over low-cost power. However, no solution to such a serious problem could be quite this simple.

Every legislative alternative has occasioned some controversy and concern, especially in the region itself. Commencing in the 95th Congress and carrying through to the second session of this Congress, a variety of legislative approaches have been introduced and extensive hearings have been held. These hearings showed that acceptable legislation had to include: (1) strong conservation provisions; (2) provisions protecting the existing preference clause, and insurance that this legislation should not be considered as a precedent for other regions; (3) an effective regionwide public planning process; (4) a share in the economic benefits of the lower-cost Federal system for the residential customers of the non-preference customers; (5) higher rates for direct service customers; (6) fish and wildlife protection, mitigation, and enhancement measures; and

(7) assurances that the Northwest's legislative solution not impact detrimentally on other regions.

The hearings also demonstrated that a legislative solution to the region's electric power planning problems was imperative. The certain inability of the region otherwise to resolve its problems without legislation represents a serious economic, social, and environmental threat to the region and, by implication, to other regions of the country. The continued failure to use existing resources and conservation effectively and to plan efficiently for future needs raises the potential of severe regional electrical power shortages in this decade.

PURPOSE OF THE LEGISLATION

S. 885, as amended by the Committee, provides a mechanism through which the Pacific Northwest can resolve the differing claims over how the Federal resources are to be shared and begin coordinated planning to meet the electric power needs of the region. Emphasis is placed on conservation and the development of renewable resources. The Committee amendment establishes a public planning process to enable the States, localities, consumers, customers, fish and wildlife agencies and appropriate Indian tribes, users of the Columbia River System, and the public at large, to participate in the region's electric power decisionmaking process. It serves to protect and enhance the fish and wildlife of the Columbia River System. It fully preserves the preference clause and the long-held statutory rights of preference customers. It is not, however, intended to be a precedent for other regions, uniquely suitable for this region primarily because of the central role of BPA in the region's power system.

SUMMARY OF THE LEGISLATION

The Pacific Northwest Electric Power Planning and Conservation Act is intended to provide a legislative solution to the electric power planning problems of the Northwest.

It authorizes the Bonneville Power Administration to acquire additional resources on a long-term basis, giving first priority to conservation and renewable resources. The Act also requires the Administrator to sign new contracts for the sale of power to the region's utilities and direct service customers. In the absence of this authority, the Administrator would need to allocate the existing limited Federal resources among BPA's preference customers (public bodies and cooperatives) administratively (subject to judicial challenge), leaving these, other utilities, and the industrial customers in the region with the responsibility to meet their own uncertain future power needs.

To ensure that this authority to acquire purchase power is exercised in the region's best interest, a regional planning Council is established. This Council, made up of 11 voting members appointed by the Secretary of Energy upon the recommendation of the region's governors, is charged with establishing a Plan to guide the Administrator in the exercise of his authorities. In acquiring necessary resources to meet the projected power demands of the region, the Administrator must pursue conservation and end user renewable resources before proceeding to other resources. No major resources found to be inconsistent with the regionally developed Plan can be acquired without a lengthy process that ultimately requires approval by Congress.

Acquisition authority does not permit BPA construction or ownership, but permits the Administrator to purchase power developed by others for sale to the Administrator. To the extent that conservation measures cannot satisfy the region's needs, the Administrator is authorized, consistent with the plan, to enter into contracts with a sponsor of a generating resource to acquire the capacity of that resource. In this way, BPA is permitted to add to the regional power supply.

With this authority, the Administrator would be permitted to enter into contracts promising to meet the future

net requirements of his authorized customers and additional qualified customers. With such contracts, the preference customers could be assured of having all of their future needs satisfied and, pursuant to provisions of the Committee amendment, could maintain their existing preference to the supply and price of that power.

Direct service industrial customers now may purchase power, firm or near firm, directly from BPA. In 1978, BPA made direct sales of power to 13 DSIs located in Oregon, Washington, and Montana. Six of these operate 10 aluminum reduction plants, providing about 30 percent of U.S. domestic aluminum production capacity, while the other 9 are electroprocessing, pulp, paper, or chemical companies.

Following is a list provided by the General Accounting Office of DSIs receiving power from BPA, with their contract expiration dates and contract demand amounts:

Customer	Contract expiration	Demand (million watts) (as of Mar. 1, 1979)
Aluminum companies(6):		
Alcoa	June 15, 1987	520
Anaconda Co.	Sept. 8, 1987	379
Intalco	Oct. 22, 1984	438
Kaiser Aluminum & Chemical Corp.	Oct. 10, 1986	674
Martin-Marieta Aluminum Corp.	Feb. 13, 1988	380
Reynolds Metals Co.	Dec. 28, 1986	690
Subtotal		<u>3,081</u>
Other companies(9):		
The Carborundum Co.	Dec. 31, 1985	30
Crown Zellerbach Corp.	Aug. 30, 1983	14
Georgia Pacific Corp.	July 6, 1984	27
Hanna Nickel Smelting Co.	June 26, 1990	115
Oregon Metallurgical Corp.	May 7, 1988	9
Pacific Carbide & Alloys Co.	Sept. 9, 1991	8
Pennwalt Corp.	Dec. 31, 1985	45
Stauffer Chemical Works	Apr. 22, 1988	80
Union Carbide Corp.	May 11, 1981	12
Subtotal		<u>340</u>
Total(15)		<u>3,421</u>

The GAO advises that BPA sales of power to these companies in 1978 were:

	Kilowatt- hours (billions)	Dollars (millions)
Six aluminum companies	23.9	57.1
Nine other companies	2.1	5.5
Sales to DSI's	26.0	62.6
Total BPA sales	76.5	267.5
DSI sales as percent of total BPA sales ..	34	23

The Committee Amendment specifically authorizes the Administrator to enter into new contracts with these direct service industries. These contracts will provide power in amounts equal to, but not greater than, that which these companies are now entitled under existing contracts with BPA, and the terms of these contracts will require that these companies continue to supply reserves for the region.

These industries will also pay significantly higher rates under the new contracts. These higher rates permit the Administrator to enter into contracts with the region's investor-owned utilities for an exchange of power equal to the utilities' residential load. This exchange will permit residential customers of investor-owned utilities to share in the benefits of the lower-cost Federal resources. The power sold to BPA will be sold at the utilities' average system cost and purchased back at the rate paid by the preference customers' utilization their general requirements. The loss in revenue to the Administrator is in effect returned by the higher direct service industry rates. By providing these residential customers wholesale rate parity with residential customers of preference utilities, the amendment serves in a substantial way to cure a major part of the allocation problem.

The amendment also authorizes the Administrator to enter into contracts with investor-owned utilities to meet their future load growth. Although the rates for power sold under these contracts will be higher than is now being

paid by the preference customers for their general requirements, the offer of these contracts has benefits for these utilities' customers. It will integrate these utilities into an overall planning and delivery system which is appropriate to this region. By permitting a regional backup for the development of power necessary to meet this new obligation of the Administrator, the power will be produced at lesser cost. This will benefit all of the investor-owned utility customers. In addition, the lower cost power will result in lower average system costs, and thus lessen the cost of the exchange.

The amendment also ensures that regional planning and the management of the region's hydroelectric projects will pay due regard to the fish and wildlife resources of the Columbia River System, including anadromous fish. Protection, mitigation, and enhancement of this important resource is an integral element in this proposal.

LEGISLATIVE BACKGROUND

On August 17, 1978, former Congressman Lloyd Meeds introduced H.R. 13931, in an effort to provide a solution to the electric power planning problems identified within the region at the time. An identical bill, S. 3418, was introduced by Senator Henry M. Jackson. These bills represented a redraft of proposal first introduced in 1977. H.R. 13931 was cosponsored by eight Congressmen from the region and was jointly referred to the Committee on Interior and Insular Affairs and this Committee.

On September 19, 1978, the Committee's Subcommittee on Energy and Power initiated hearings on H.R. 13931. At that hearing, Subcommittee Chairman John D. Dingell said:

This bill is of vital concern of the consumers of the region. * * *, it raises a number of difficult issues, some of which reach far beyond the borders of the Columbia River Basin in their implications. These include: Impact on traditional Federal marketing pri-

orities, timetables for the implementation of vitally needed energy conservation programs, as well as the adequacy of those programs, the standards to be imposed upon the administrator of BPA, the adequacy of provisions for public participation, the costs of such a program to the Federal Treasury, the provisions for the acquisition of additional generating capacity and the purchase of power, the impact on the preference clause, antitrust questions, tax issues and more.

Additional hearings by the Subcommittee were held on September 27, 1978 in Washington, D.C. and on December 11, 13, and 14 in the States of Washington, Oregon, and Idaho. During these hearings, testimony was heard from over 100 witnesses including many of the region's elected officials, various Federal agencies, the General Accounting Office, State and local agencies, interested national groups, utility and industry representatives, fish and wildlife interests, environmental groups and the general public.

These hearings demonstrated that while a need for legislation clearly existed, the legislation needed considerable improvement.

At the commencement of the 96th Congress, H.R. 3508 was introduced by Congressman Al Ullman of Oregon, together with 11 other Members of the region's delegation. Similarly, Senator Jackson introduced S. 885 in the Senate. These bills contained the same provisions as H.R. 13931 and S. 3418. The sponsors of H.R. 3508 and S. 885 indicated, however, that introduction of this same bill was intended to trigger immediate legislative consideration and that there was a general consensus on a need for substantial modification.

On July 30, 1979, the Senate Committee on Energy and Natural Resources reported S. 885 with an amendment (S. Rept. 96-272) that substantially revised the bill. The

bill passed the Senate on July 30, 1979 after additional amendments were adopted.

Other bills introduced in the House during the 96th Congress are: H.R. 3508 by Mr. Ullman and 12 co-sponsors; H.R. 4137 and H.R. 4159 by Mr. Weaver; H.R. 5146 by Mr. Ullman; H.R. 5260 by Mr. Murphy of New York and H.R. 6677 by Mr. Swift.

Two additional days of hearings were held by the Subcommittee on July 30 and October 19, 1979. During the July 30 hearings, Congressman Tom Foley, on behalf of himself, Congressmen Ullman, Duncan, AuCoin, Pritchard, Baker, Dicks, Swift, Hansen and Symms, stressed the urgent need for legislation in this region. Congressman Foley briefly noted the four basic needs of the region:

The first of these is allocation. Half of the power in the Northwest is relatively low cost Federal power. All of that power is presently committed by contracts that begin expiring in 1981, and Bonneville lacks the authority to add significantly to supplies. Thus, allocation of Federal power cannot be avoided; the only issue is whether the reallocation will be legislated by Congress or performed administratively by the Administrator of BPA. An administrative allocation will be fought over for years in the courts because the amount of Federal power is sufficiently large and the cost is sufficiently low that none of the utilities or the industries serviced directly by BPA can afford not to take part in the impending courtroom battles. Without a legislative allocation of Federal power, disruption in the region is virtually inevitable.

The second need is power supplies. The Northwest has been growing rapidly, but even if our growth rate declined dramatically, the potential for large power deficits will remain during every year of the coming decade. The impact of such shortages on the Northwest will be particularly severe; no region is more dependent

on electric energy than ours. We cannot, by legislation, eliminate such shortages. What we can do, and must do, is give our region the tools it needs to reduce any impending power shortage through cooperative planning, development, and operation of our power resources and through stimulating electric energy conservation. We can and should do this under legislation that requires the Northwest to continue paying its own way.

Third is a regional power resource mix. In recent years, the Northwest has virtually exhausted its ability to obtain more firm energy from new hydroelectric units. We do not have significant oil and natural gas resources in the Pacific Northwest, and we do not use either gas or oil to generate any significant percentage of Northwest electricity. Within the Bonneville service territory, we have relatively little coal. Ten years ago, the region turned primarily to nuclear power to meet its load growth needs.

But nuclear power in the Northwest faces the same problems it does elsewhere in the country. For these reasons, there is increasing interest in broadening our generating resource mix to include renewable resources and there is widespread support for a strong conservation effort. We believe that every opportunity should be provided for renewable resources to compete with more conventional resources, and that conservation should be pursued vigorously. Without legislation, however, we have no regionwide mechanisms for enforcing or financing these efforts; we cannot capture their full potential under existing law.

Fourth are planning requirements. Today, power planning in the Northwest is largely in the hands of the utilities. The public, however, represented, should be more directly involved as well. Over the years, public and private utilities have worked in cooperation with Bonneville and its direct-service industries to

stretch regional energy resources and minimize the need for costly, new generating capacity. But, for a variety of reasons, few utilities possess the capacity to implement broad conservation programs and to develop renewable resources to their full, cost-effective potential. In addition, because of our heavy dependence on hydroelectric generation, energy decisionmaking also affects nonpower uses of our river system such as fisheries, farming, recreation, and navigation.

At the October 19 Subcommittee hearing, Congressman Al Swift summed up the dilemma still facing the Subcommittee:

* * * despite progress and improvement in this legislation since the last Congress, all the proposed bills, including S. 885, still appear to lack the kind of regional support necessary for passage. Specifically, the bills have been criticized as failing to protect adequately the broad range of interests which may be affected by passage.

Spokesmen for the region stress that the problems which prompted the legislation are no less serious today than they were last September when we began the first of 8 days of hearings on this subject. These problems include the need to allocate valuable electric power harnessed from the energies of the treasured Columbia River system; the need for strong conservation programs, and regional electric power planning, and the need to enhance the region's diminishing anadromous fish resources.

On March 3, 1980, Congressman Swift introduced H.R. 6677, which substantially met many of the concerns expressed by witnesses at the Subcommittee hearings and by many Members of the Committee. The bill, while generally following the format of S. 885, substantially revised the Senate-passed bill and eliminated many ambiguities identified in that bill, particularly by the region's preference

customers, the DSI's private utilities, governmental entities, Indian representatives, fishery representatives, environmentalists, and many concerned individuals in the region. It was the basic markup bill in the Subcommittee and the Committee, representing a vast improvement over other bills considered by the Committee.

COMMITTEE ACTION

The Committee on Interstate and Foreign Commerce met on March 19, 1980 to consider the text of H.R. 6677 as an amendment to S. 885 and ordered S. 885, with an amendment, reported to the House by a voice vote, a quorum being present.

The Committee wishes particularly to commend Congressman Swift and all the Members of the region who have been immeasurably helpful to the Committee in understanding the problems of the region. These Members have worked with the various entities and citizens of the region to develop an improved bill aimed at meeting the concerns of region and the nonregional interests.

The Committee also expresses its appreciation to the Administrator of the BPA, Mr. S. Sterling Munro, and his staff for the technical assistance BPA provided to the Committee.

The Committee is also appreciative of the assistance received from the General Accounting Office. The GAO's report of September 4, 1979, entitled "Impacts and Implications of the Pacific Northwest Power Bill", was extremely helpful to the Committee.

GENERAL EXPLANATION

The basic framework of the Committee amendment to S. 885 corresponds to the structure of all of the introduced bills addressing the electric power planning problems faced by the Pacific Northwest. These basic features are: (1) a grant of expanded authority to the Bonneville Power Administrator to purchase additional power on a long-term

basis; (2) the establishment of a public planning process charged with preparing a plan to guide the Administrator; (3) the establishment of effective provisions concerning fish and wildlife of the Columbia River and its tributaries; (4) a requirement that conservation and renewables have a priority for acquisition by the Administrator; (5) an obligation on the Administrator to offer new long-term contracts for the sale of power to preference customers, Federal agencies, investor-owned utilities, and existing direct service industries; (6) a revised schedule of rates; and (7) a power exchange designed to benefit the region's residential customers; and (8) preservation of the preference clause. A number of concerns are raised by the provisions detailing these basic components and the following discussion highlights those issues and how they were addressed by the Committee.

a. Protection of the preference clause

Preference means the statutory priority to purchase Federally-generated electricity which has, generally been provided to public bodies and rural electric cooperatives in over 32 Federal power marketing laws. These preference provisions date back to 1902 and were enacted to insure that Federal hydroelectric generating facilities would be operated for the benefit of the general public. As noted earlier in this report, the principal preference clause applicable to the Pacific Northwest is included in the Bonneville Project Act. Although similar to other statutes, this Act also contains additional language indicating that the "general public", especially domestic and rural customers, should benefit from the sale of Federal power.

Concerns have been expressed that S. 885 might be construed to change the meaning or application of preference in the Northwest, and by precedent, nationally. However, the intention of this Committee is clear. The Committee does not want to undo nearly 80 years of history or establish any precedent. Specific provisions incorporated in the Committee amendment are designed to protect the

entitlement of both existing and new preference customers to the full Federal base system. These provisions seek to protect preference as to both supply and price.

One of the basic provisions of the Committee amendment is section 5(a). It states:

SECTION 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

The purpose of this provision is clear. The Committee wants to insure that all preference customer contract requirements will continue to have a priority over sale to other customers and other sales would be, in effect, subordinate to preference provisions of the Bonneville Project Act, including the five-year withdrawal features for contracts with nonpreference customers and the 20-year limitation on the terms of the contract.

Section 5(b)(6) also assures preference customers' right to purchase power from the equivalent Federal base system before BPA can restrict its obligation to deliver power to those customers.

In addition, section 7(b) reserves for preference customers the price benefits of Federal power that they would have enjoyed in the absence of this legislation. This is accomplished by a "rate ceiling" which governs preference customer general requirements rates. Under this provision, the Northwest preference customers could pay less — but not more — for power under the legislation than they would have in any 5-year period.

The "rate ceiling" is essentially that preference customers' cost of power from BPA will not exceed the costs they would have paid for power if:

(1) preference customers were served from available Federal base system resources and, after these

were exhausted, from such customers' own new resources;

(2) preference customers served direct-service industrial customers located in or adjacent to their geographic service boundaries; and

(3) no IOU exchanges for residential customers were made.

Lastly, section 10(c) of the bill contains a disclaimer which flatly states that the bill does not "alter, diminish, abridge, or otherwise affect", either directly or indirectly, the preference provisions of other Federal laws. The Committee clearly intends no such construction of this Act by a court, Federal agency, or others that could affect in any way such provisions of law.

The Committee believes that these and other safeguards adequately protect the preference clause and the long-held rights of preference customers in the Pacific Northwest and elsewhere.

b. BPA financing and Federal guarantees

The Bonneville Power Administration is self-financed. Pursuant to the Federal Columbia River Transmission Act, BPA must meet all its costs, including the cost of the Federal investment in the Columbia River system, from its power sale revenues. General tax revenues are not used to support BPA programs. The Committee amendment continues this financial independence while maintaining the current practice of Congressional review of BPA activities as part of the normal budget review process.

However, issues were raised concerning Federal backup or "guarantee" of the Administrator's acquisition of resources. Although section (6)(i) makes clear that Federal monies could not be used to support acquisitions or other activities, BPA would remain a Federal agency and it was argued by some that a Federal backup might be provided

when the Administrator assumes an obligation to pay project expenses including debt obligations issued in connection with an acquired resource. The Department of Treasury was asked to address this concern and to make recommendations for necessary changes. Treasury defined as a possible guarantee the use of BPA bond authority in connection with many resource acquisitions. Assistant Secretary of Treasury Roger Altman, in September 25, 1979 testimony before the House Committee on Interior and Insular Affairs, was principally concerned with what he saw in S. 885, as it passed the Senate, as a "granting of tax-exempt interest coupled with the backup of a Federal agency's . . . credit".

To meet this problem, Secretary Altman recommended that section 8 of S. 885 be amended to only "extend the borrowing authority for financing conservation programs and small, renewable resource projects".

Section 8(c)(1) of the Committee amendment generally carries out the Secretary's recommendation in its amendment to section 13(a) of the Federal Columbia River Transmission System Act. The amendment permits use of BPA's authority to issue bonds to be extended to this legislation, but precludes such use in acquiring under section 6 of the Committee amendment "electric power from a generating facility having a planned capability greater than 50 average megawatts".

Lastly, in order to make clear that all contracts and other obligations required of the Administrator will be secured solely by BPA revenues and not by the Federal government, the Committee included section 6(j)(2) which requires that, in the sale of any obligation, all offerings and promotional material shall contain language indicating that such obligations are "not intended to be, nor are they, secured by the full faith and credit of the United States".

c. Removal of BPA restriction on acquisition or purchase of power to meet needs

One of the most controversial issues surrounding this legislation has been the concern that the grant of authority to BPA to "purchase" power as a supplement to its hydro base was too broad. A number of witnesses at the Energy and Power Subcommittee hearings voiced their concern that this authority would be misused, would make the BPA Administrator a "Czar", that BPA would undertake an expansive and expensive construction program in competition with public and private utilities, and that BPA would become a nuclear power agency. The Committee amendment addresses all of these charges and concerns.

The BPA Administrator lacks adequate authority under existing law to purchase additional power on a long-term basis. The net billing scheme discussed earlier in this report represented an attempt to provide this additional authority, but it is no longer an adequate means for resource acquisition.

BPA and others believe new authority for resource acquisition is an essential piece of this legislative solution. Without such authority, BPA asserts that the amount of power available to BPA is fixed. BPA, in a May 20, 1979 document outlining issues relative to this legislation, said:

Under the preference clause, this fixed quantity of BPA power must eventually be offered solely to the public bodies and cooperatives, since the projected needs of these preference customers will in future years exceed the total BPA supply. Given its limited power supply, BPA cannot execute new firm power sales contracts with nonpreference customers such as investor-owned utilities (IOU's) and direct service industries (DSI's) as proposed in the legislation. These facts have set the stage for an imminent and protracted legal battle within the Northwest over the meaning and application of the preference clause, the formation of

new preference utilities or other entities claiming preference status, and the fate of the DSI's and the vital power reserves that BPA's contracts with the DSI's provide for the region.

This regional legal battle can be laid to rest if (1) the DSI's are able to trade in their existing low-cost power contracts for new contracts at higher rates; (2) the low-cost power released by the DSI's can be made available to residential and small farm customers of regional IOU's; and (3) the preference rights of publicly-owned and cooperative utility systems can be preserved. Such an allocation system is the heart of the proposed regional power legislation. It would permit the Northwest to put aside its battles over low-cost power and to work cooperatively again in planning to meet the region's future needs for conservation and renewable resources, as well as conventional resources, as part of an efficient, economical, and environmentally sound regional power system.

The proposed allocation system can be carried out only through new contracts between BPA on the one hand and preference customers, IOU's and DSI's on the other. But under present law, BPA cannot execute such contracts. The fixed supply of BPA power is too small to meet even the full future requirements of preference customers in the future, and therefore contracts with the nonpreference IOU's and DSI's are legally precluded. This is true even though the total supply of Federal plus non-Federal power in the region is, and can remain, sufficient to meet the region's total loads. BPA simply cannot obtain the non-Federal power under present law.

The Committee amendments seek to address the allocation issue by directing in section 5(g) that BPA commence, within nine months after enactment, negotiations and offer

initial long-term, not to exceed 20 years, contracts to each of the following types of customers:

- (A) existing public body and cooperative customers and investor-owned utility customers;
- (B) Federal agency customers;
- (C) electric utility customers; and
- (D) direct service industrial customers.

Crucial to the legal authority to enter into these contracts is section 5(g)(7) which provides that BPA "shall be deemed to have sufficient resources" for the purposes of entering into such initial contracts. In order to fulfill its statutory commitments, the BPA must have adequate authority to acquire resources on a short-term and long-term basis.

As recognized in the Committee amendment, section 3(12) and section 6(a)(3), BPA now has authority in accordance with section 11(b)(6) of the Federal Columbia River Transmission System Act to use funds from the BPA fund to purchase electric power for periods of five years or less to meet its commitments. The Committee amendment does not alter that authority.

For the long term, section 6 authorizes the BPA to acquire "resources" to meet these contractual obligations. However, in providing this authority, the Committee was mindful of the concerns by some that this authority not provide a "blank check" to BPA to acquire whatever resources it deems appropriate. The Committee limited that authority and set priorities. For example, the Committee amendment defines the term "acquire" and "acquisition" in section 3(1) to make clear that BPA is not authorized to construct or "have ownership of" any "electric generating facility". Further, the Committee amendment provides that BPA must first "take into account planned savings from conservation and conservation measures". In addition, all acquisitions, except where specifically provided, must be

consistent with the Regional Electric Power and Conservation Plan which the regional planning Council will adopt. If no plan is adopted, the criteria and considerations of section 4(e) will apply. As an added safeguard, the Council established by this bill is empowered to review many of the acquisitions. A demonstrated need for the resource will be required. In the case of "major resources" which have a planned capability of greater than 50 average megawatts, the BPA must go through a lengthy procedure, including hearings.

The Committee believes that this purchase authority is needed. However, the Committee also believes that the above provisions, as well as others, should meet the concerns expressed by the Committee and others. Most importantly, it is the Committee's intention to conduct periodic oversight over the BPA's use of this authority.

d. Capability versus output — dry hole

BPA has no authority to own or construct power resources and the proposed legislation does not grant that authority; it does, however, permit BPA to purchase the output or capacity of power resources that are owned or constructed by other entities. The priority for resources eligible for such purchase are specified in the legislation as, first, conservation, second, renewable resources and, finally (as the least-preferred alternative), conventional thermal resources.

Concern has been expressed that authorizing BPA to purchase capacity — as distinct from mere output — will be harmful to the region's ratepayers, and that it will lead to overbuilding of conventional power resources in the Pacific Northwest and unnecessary cost overruns.

An entity (such as BPA) purchasing power from the owner of a power resource (such as a utility) may do so in two basic ways. First, if the resource is already in existence and a certain amount of power appears to be surplus to the needs of the owner for some period of time, the purchasing

entity may simply buy that amount of power from the resource on the utility system. This type of purchase is most common in cases of temporary surpluses and deficits among interconnected power suppliers, and generally involves only short-term purchases and sales.

A second type of purchase arrangement is generally used when the power resource in question is not yet constructed. The owner planning to build such a resource may offer to sell an ownership share in the project or, alternatively, a share of the resource's planned capability. In either event, the purchaser is obligated to pay its percentage share of the project's construction and operating costs and is allowed to exercise ownership operating rights for its share, just as if the purchaser were a part owner. This type of arrangement was extensively used in developing the non-Federal mid-Columbia hydro facilities and is now used generally throughout the United States. The legislation would permit BPA to enter into this type of arrangement.

Since the purchase of resource capability carries with it the risks of unexpected cost overruns and operating problems (including the risk of a so-called "dry hole"), it might appear that capability purchases are imprudent, even if traditional. The reasons that support creation of purchase agreements are as follows:

- (1) The risk of cost overruns and operating problems are inherent in constructing any power resource (including conservation investment programs such as regionwide home insulation). These risks are ordinarily borne by ratepayers that will obtain the benefits. An individual utility owner of a power resource will not agree to an arrangement that leaves all the risks on the shoulders of its own ratepayers yet shares the benefits (the power produced at cost) with the ratepayers of the purchasing entity.

- (2) The long-term purchaser is really equivalent to a part owner of the resource, since the purchaser will receive the right to a certain percentage of the power for the life of the

resource and will pay only the actual costs of the resource. It is fair that the purchaser assume its percentage share of the risks.

(3) In many cases, the resource is being built or undertaken by a group of utilities primarily to satisfy the regional power needs. If BPA did not agree to purchase capability as its share of the project, the project would simply be undertaken by a group of utilities on their own, with each utility meeting its own load growth requirements through its own projects and with no help to BPA. Such action would in turn decrease the integration and efficiency of the regional power system and would probably lead to overbuilding of power resources, with added costs to consumers. There would be no regional program under these circumstances.

(4) Purchase of capability reduces costs to consumers by reducing financing costs of the new resource, whether that bond-financed resource is conservation or a generating facility. Financing costs — a very substantial portion of total power costs — are reduced because bond buyers are willing to accept lower interest rates on lower-risk bonds, the wider the risks can be spread, the more secure the bonds. As discussed in (3) above, without purchase of capability the utilities must look to themselves to absorb the risk and would consequently lose access to over half the region's power supply over which they could otherwise spread the risk.

(5) Purchase of capability, by placing the purchaser in a quasi-ownership status, also permits the purchaser to exercise effective oversight on resource management, construction and operation. A mere purchase of power would have no such opportunity. Yet the cost of power to the purchaser is based in both cases on the actual construction and operating costs of the power resource. The Committee amendment strengthens the BPA in this regard and requires BPA to oversee such construction and operation.

If the bill limited BPA purchase of resources to actual output only, BPA, in order to have available power to sell, would have to find utilities who would be willing to develop new resources at risk to their customers and, at the same time, also be willing to provide to BPA the benefits of an operating plant. The testimony shows that no utility would prudently agree to such an arrangement. One may contend that such testimony is self-serving and that if Congress authorized acquisition of actual output only, the utilities would, in fact, enter into such agreements because of the advantages of hooking up to the BPA system. The Committee recognizes this possibility, but believes it is too speculative and is inconsistent with longstanding utility practice. The General Accounting Office confirmed that this practice exists in a September 4, 1979 response to questions posed by Subcommittee Chairman Dingell. The GAO said:

Our review indicated that it is common practice for electric utilities purchasing the output of major thermal plants to agree to repay construction bonds whether the plant operates or not. Generally, plant output is not guaranteed by any one entity because the risks of cost overruns and operating problems — particularly on nuclear power plants — are too great to be safely assumed by a single owner or builder. It is therefore natural for several utilities to share the risk of a "dry hole".¹ By doing so they can limit their respective risks and collectively provide a large enough revenue base to withstand a major loss.

With respect to the reasonableness of BPA's purchasing the capability of WPPSS nuclear plants, two other questions emerge. The first question is whether BPA should limit its customers' exposure to financial risks by committing them to large thermal power plants more cautiously or with more diversity. BPA's present commitments include 100 percent of the output of two WPPSS plants, WNP-1, and WNP-2, and 70 percent of a third plant, WNP-3. The aggressiveness of BPA's

commitment has its drawbacks. There is virtually no sharing of the considerable financial risks with other utilities — BPA has not taken on sufficient partners in construction. In this respect, we noted that the region's investor-owned utilities have never committed themselves to as much as 70 percent of a regional nuclear plant. Of the five nuclear plants constructed or planned for construction by investor-owned utilities, the average participation for each utility is about 30 percent of any one plant. [Footnote omitted.]

The Committee shares the GAO concern about the "aggressiveness of BPA's commitment". Sharing of financial risks among several entities is prudent and should certainly be given careful consideration by BPA and the council in administering this program. The Committee did not want to limit BPA's exposure because this might not have proved wise, particularly in light of concerns discussed later in this report about exempting utilities from the requirements of the Public Utility Holding Company Act. However, the Committee strongly believes that the BPA should act conservatively in entering into these commitments and expects that all such proposals will be fully justified and carefully scrutinized in the review process for acquiring resources set forth in the Committee amendment.

e. Public Utility Holding Company Act of 1935

One controversial provision concerning this legislation has been the proposal to exempt from the provisions of the Public Utility Holding Company Act of 1937 persons and companies in the Northwest that are organized for the primary purpose of financing, constructing, and managing electric generation facilities wherein 75 percent or more of the power is, or will be, sold to BPA. Mr. Robert Short, President of Portland General Electric Co., testified that the "reason for creating generating subsidiaries is to reduce the financing cost of building plants". He said:

The purpose of section 9(b) is to allow the eight investor owned utilities in the Pacific Northwest to

create jointly owned corporations to finance, construct, and operate plants to sell power to BPA under this bill. The reason for creating generating subsidiaries is to reduce the financing cost of plants.

A generating subsidiary would not be subject to most utility indentures restrictions and could have a higher debt ratio. BPA's contract to purchase the output of the plant will strengthen the generating subsidiary's credit rating, thereby allowing a higher debt ratio; thus, lower interest rates.

The Public Utility Holding Company Act exemption is needed because, as the SEC pointed out in its September 25, 1978, letter to Chairman Dingell, formation of a generating subsidiary would cause us to be deemed "holding companies" under the Public Utility Holding Company Act. The Holding Company Act puts us to a choice — either accept holding company status or stay out of a generating subsidiary. Holding company status could require several of the Pacific Northwest utilities to divest themselves of nonelectric utilities and one of them to divest itself of the part of its electric system not in contiguous states, as well as raise questions about the status of non-utility properties. The cost of holding company status would be too high, so that the benefits of the generating subsidiaries would be foregone.

Exemption from the Public Utility Holding Company Act is not an escape from regulation. Every private utility is subject to complete regulation — either by states, the FERC, or in most cases, both. A generating subsidiary would be subject to the same system of regulation.

However, Mr. Alex Radin, Executive Director of the American Public Power Association, objected to a "blanket exemption" by legislation. He said:

We have been informed by the SEC that no similar statutory exemption has even been granted, and we

do not believe that such a legislative exemption is necessary or desirable in this instance. It should be noted that procedures are contained in the Public Utility Holding Company Act itself for exempting companies from the Act's requirements. It is therefore possible that exemptions, if necessary, could be secured through available administrative procedures. The administrative exemption route would permit the SEC to review the types of actions to be undertaken. This review would be preferable to the unreviewable exemption to be conferred by the legislation.

The Federal Trade Commission and many members of this Committee also doubted that a legislative exemption was necessary or desirable. Chairman Dingell and Congressman Gore particularly noted that the SEC has been somewhat lax in its enforcement of the Act, but doubted that was sufficient reason for eliminating SEC's role entirely. The FTC, in a July 26, 1979 letter to Congressman Weaver said:

I disagree that a legislative exemption is more suitable than an administrative one. In section 3(d) Congress has conferred broad rulemaking authority upon the SEC, which has developed more than 40 years of expertise in administering the Act. More important, the SEC could revoke an administrative exemption if the conduct of the companies involved so warranted, where as a legislative exemption could not be altered by further Congressional action. I believe that competition and consumer protection would be better served under an administrative exemption—and the SEC's continuous monitoring which such an exemption would entail—than by a legislative one.

However, the SEC, which administers the Act, disagreed and supported the legislative exemption act. Indeed, the SEC, in a January 14, 1980 letter to the Subcommittee, said:

* * * it does not appear that there is any substantial need to subject the sponsoring parent companies of the

proposed generating company to regulation under the Act. All of these companies, and the proposed generation company will qualify for exemption only as long as it serves the purposes of the bill. The impact of regulation under the Act would relate to matters having little to do with the purpose for which the generation company is to be organized.

The SEC also expressed reservations about certain proposed monitoring responsibilities delegated to the Commission.

The Committee was convinced that leaving the matter to a subsequent administrative determination under existing law, particularly if Congress rejected a statutory exemption, would not be sound. Similarly, the Committee did not believe it sound to establish a legislative exemption subject only to approval by the BPA, which has no expertise under the Act. Also, the Committee did not share the SEC's view that monitoring was unnecessary. Thus, the Committee amendment authorizes an exemption where both the BPA and the SEC concur that the organization of the new company is consistent with the policies of the 1937 Act. The exemption is not automatic.

The Committee also required that at least 90 percent of the electricity generated by such company be sold to the Administrator. Despite the SEC view that administrative difficulties exist with respect to a percentage limit, the Committee included this provision in order to narrow opportunities for abuse.

In addition, the company must show the BPA and the SEC that participation in the company's facilities must be offered to the region's public bodies and cooperatives. Also, BPA must include in contracts with such companies provisions limiting the equity investment in such company. BPA, with the SEC's concurrence, must approve certain contracts between the company and any sponsor company or subsidiary.

Most importantly, the Committee requires that the SEC and BPA monitor the exempted company. If either SEC or BPA determines that it is not operating in a manner consistent with the 1937 Act, a preliminary determination will be issued and made public. A hearing will then be held if the consistent conduct is not remedied and a final determination will be issued.

The Committee expects both agencies, particularly the SEC, to act prudently and with vigilance in administering this first exemption from the 1937 Act. This provision is not to be considered a precedent for future exemptions.

f. Tax-exempt financing by public bodies

Under existing law, State and local governmental units are permitted to finance generating projects by issuing bonds, the income from which is exempt from Federal taxation. The legislation does not change the existing tax exempt status of those governmental units that are also public utilities.

Under this bill the region's publicly-owned utilities will finance powerplants, to meet their projected load growth through sales to BPA. Although BPA will be merely reselling this power back to these same utilities, the Committee recognized that the sale to Bonneville would be a sale to a non-exempt person, thus jeopardizing the use by these public utilities of their existing privilege of tax-exempt financing. Although the sale of power from these resources to BPA should not destroy this authority, it was also the clear intent of the Committee not to expand the authority. In this respect, there was concern that section 9(e) of the Senate-passed bill would allow those generating units to provide substantial amounts of generation for sale to BPA to meet load growth of investor-owned utilities. In order to avoid this possibility, the Committee specifically amended this section to limit BPA's purchases from State and local governmental units to that amount of power which is needed to meet the load growth of public bodies, co-

operatives and Federal agencies at a cost no greater than the cost which would be applicable without the acquisition. To assure that there is no abuse, the Administrator must certify, in accordance with a procedure and methodology approved by the Secretary of the Treasury, that BPA is acquiring resources for these entities solely. However, an exception is permitted where BPA also certifies that it is not able to acquire the resources without selling a portion to non-exempt persons, as defined in the IRS Code. In addition, the Secretary of Treasury must determine that less than a major portion is to be furnished to persons who are not tax exempt under regulations applicable to industrial development bonds.

The resource can be planned and used to meet the load growth of cooperatives at Federal agencies, as well as public bodies, even though cooperatives and Federal agencies are not exempt bodies under Internal Revenue Service regulations. However, in making the determination under such regulations that less than a major portion of the resource is to be furnished to non-exempt persons, the Secretary will treat Federal agencies and cooperatives as non-exempt.

With these provisions, the existing authority to issue tax-free bonds is preserved but not expanded.

g. The bill's impact on other regions

Concerns have been expressed that the legislation may have the effect of providing incentives for new commerce and industry to move to the Pacific Northwest at the expense of other regions, or that the bill may afford Northwest utilities special financing advantages over other parts of the country. In addition, some fear the bill's effect on the Pacific Northwest's ability to supply surplus energy to other regions.

Electric power rates in the Northwest are and have been among the lowest in the Nation, though this fact has not

resulted in disproportionate amounts of industrial and commercial activity in the Northwest.

Under this bill, rates for increased loads resulting from any new commercial and industrial activity ("New Single Large Loads", section 3(12)) are excluded from the Federal base resource rate. Thus, any utility seeking additional power to serve such a load would be charged a rate equivalent to the new resource cost. This new resource cost should be the same or higher than the cost to utilities in other regions to serve such load. This provision should help to narrow, rather than expand, the Northwest's advantage in attracting new industry through lower-cost electricity. (Industry and commerce served by IOU's do not and would not, under the bill, have access to the low-cost Federal base system.)

It will remain possible, however, for a public utility to subsidize industry with lower-cost residential power. This would, of course, need the consent of the utility's governing body.

The bill would create a more secure marketing arrangement by virtue of the BPA purchase authority since it would have the effect of putting all BPA's customers behind certain State and local obligations. This would create a lower-risk security, bearing a lower return on capital. This has raised the question of whether Northwest security issues could adversely impact security issues of utilities in other regions where comparable marketing schemes do not exist.

The Subcommittee on Energy and Power explored this issue and the evidence heard indicated that financing under this bill should not jeopardize financing of projects in other regions and that insofar as the conservation provisions decrease the development of generating resources, this will mean less competition in capital markets. As is the existing practice, bond sellers will continue carefully watching the issuance of debt obligations from other borrowers, including

the Pacific Northwest, so as to minimize competition but there was no evidence presented to the Committee that this legislation will detrimentally impact other borrowers.

The Northwest is now interconnected to other Western regions, particularly the Pacific Southwest. Mutually-advantageous regional exchanges and sales of surplus hydro energy from the Northwest to the Southwest have been effected over the intertie to the Southwest. The Northwest's seasonal surplus occurs at the same time as the Southwest's seasonal peak and the Northwest's winter peak also comes at a time of seasonal surplus for the Southwest utilities. As a result, over the past 11 years, an estimated 67.5 billion Kwh of surplus energy have been sold to Southwest utilities, displacing oil consumption of 230 million barrels of oil or its equivalent.

To the extent that the Committee amendment would resolve the impending BPA administrative allocation and the incident uncertainty in power planning, the region is more likely to have the resources to support mutually advantageous exchanges with other regions and, in years of high river flows, seasonal surpluses to sell.

In summary, the Committee was careful to ensure that this bill would not detrimentally impact other regions and that any impact would, in fact, be beneficial.

h. Fish and wildlife

The Pacific Northwest has the distinction of being an area with an abundance of fish and wildlife resources that has provided food and recreation for many each year. The Puget Sound, for example, is a principal wintering area for waterfowl from British Columbia, the Northwest territories, Alaska, and Eastern Russia. Similarly, many areas of the Columbia River and tributaries provide nesting and resting areas for waterfowl and other migratory birds of the Pacific Flyway. However, many of these areas have been adversely affected by dams.

Probably the most important water-related resource of the region is the anadromous salmon and steelhead resources of the Columbia Basin. The once plentiful anadromous fish runs in the Columbia River Basin have been badly depleted. Several of these fishery species are being studied for listing as threatened and endangered species. About two-thirds of the area where salmon and steelhead originally spawned have been rendered inaccessible to the fish by the construction of dams. The GAO described the impact of these dams on anadromous fish in its September 4, 1979 report to Subcommittee Chairman Dingell as follows (pp. IV.3-IV.5):

Until the completion of the Grand Coulee Dam on the Mid-Columbia River in 1941, adult salmon and steelhead enjoyed fairly unimpaired access to most of their historic spawning areas. Chinook salmon once traveled nearly 1,200 miles up the Columbia River to spawn in tributaries of its headwaters in Canada. Because of its great height, Grand Coulee Dam was not provided with fishways, and its completion ended access by anadromous fish to more than 500 miles of the upper river and many hundred miles of productive spawning and river tributaries. During the next three decades more dams were constructed along the main-stem of the Columbia River and its major tributary, the Snake River. Chief Joseph Dam, constructed and operated by the Corps of Engineers, and Hells Canyon Dam, operated by the Idaho Power Company, mark the upstream limits of anadromous fish migration on the Columbia and Snake Rivers, respectively, since neither was provided with fish ladders.

Adult salmon and steelhead ranging from 5 to 50 pounds must negotiate 9 dams to reach the upstream limit of their migration on the Columbia River. Adult fish journeying to the natural spawning areas in the Snake River and its major tributary, the Salmon River, must pass over eight dams—four on the Columbia and four on the Snake. Of the 16 main-stem dams impacting

on the anadromous fish, 9 are operated by the Corps of Engineers, 1 by the Bureau of Reclamation, and 6 by electric utilities in Washington and Idaho.

The dams also pose serious problems for young salmon and steelhead migrating downstream to the sea. Prior to the expanded development of the river's main-stem, large quantities of water in excess of power needs were allowed to flow over the spillways. This spillage aided the downstream move of smolts, but resulted in nitrogen supersaturation which cause a high mortality rate. This problem was reduced by the development of spillway deflectors, increases in upstream storage capacity, and installation of additional turbines.

In recent years, completion of more main-stem projects and the installation of additional turbines for peaking purposes have enabled power managers to put most of the river flow through their powerhouse turbines. While this reduced spillage and nitrogen supersaturation, it created a serious new problem—turbine mortality among migrating juvenile salmon and steelhead. During the period of April to June when the juveniles are migrating downstream, great numbers of them are killed by or as a result of passage through the hydropower turbines.

Smolts surviving passage through the turbines of one dam enter the large, slow-moving reservoir of water formed by the next dam. The river no longer has the strong, swift current needed to carry the smolts rapidly downstream and out to sea. It now takes young fish more than twice as long to migrate downstream as it did before the dams were built. The slower the downstream migration, the more smolts are lost to predators. Others lose the desire to migrate and become permanent residents of the river, further reducing the breeding stock that finally reaches the ocean. It is the cumulative effect of hydro facilities which is so destruc-

tive. Each facility poses a separate and sometimes different set of problems for migrating smolts, and each contributes to a cumulative deterioration of the downstream migration. Depending on flows, juvenile losses from all causes average an estimated 15 to 20 percent at each main-stem dam and reservoir complex. Mortalities as high as 30 percent per project have been recorded under particularly adverse conditions.

These problems occur in normal or good water years. In low or below normal water years, the problems are compounded and mortality rates for downstream migrants increase. Juvenile losses increase because of competition for available water supplies. River waste is released from upstream reservoirs when needed to best serve flood control, power production, and irrigation purposes. This may or may not provide enough water at the right time to aid the downstream migration of young salmon and steelhead.

Many of the witnesses at the Subcommittee's regional hearings complained that fish and wildlife resources and their protectors are ignored or treated with disdain by the power interests of the region. Fish and wildlife migration and enhancement is not mentioned as an authorized purpose of the Federal dams. The fish and wildlife have no vested rights. Fish hatcheries to compensate for fish losses have been built, but this has not been enough. Efforts to maintain flows for anadromous fish runs have often reportedly met resistance. The GAO points out that the BPA, for example, recognizes "the cost of revenue lost as a result of special operations, including water spillage, at Federal dams to facilitate downstream movement of juvenile salmon and steelhead during the spring".

One critic of the Pacific Northwest's power interests testified that he feels that these interests take the view that all unappropriated water in the main-stem Columbia and lower Snake Rivers should be used to maximize power production and revenues. He is Mr. Ed Chaney of the

Northwest Resource Information Center, Inc., in Idaho. Mr. Chaney said:

During the years of low and average runoff, virtually the entire flow of the main-stem Columbia and to a somewhat lesser extent the lower Snake River is put through the turbines of successive main-stem dams. Salmon and steelhead migrating to the sea from the upper Columbia Basin necessarily go with the flow. During the low flow year of 1973, an estimated 95 percent of all salmon and steelhead produced in the upper Columbia Basin were killed by main-stem dams and reservoirs before reaching the estuary below Bonneville Dam.

This catastrophic loss prompted basin State and Federal fishery agencies to ask the Federal agencies (BPA, Corps, and Reclamation) and the Washington County public utility districts to annually manipulate main-stem flows during the peak of juvenile downstream migration to minimize mortalities. This request was met with what can only be politely termed a decided lack of enthusiasm.

Record low flows associated with the 1977 drought threatened to annihilate upriver salmon and steelhead runs already in serious trouble from years of chronic uncompensated losses at Federal and PUD hydrodams. In spite of this threat, Federal and PUD hydropower interest refused to divert any of the public's unappropriated water from hydropower production to prevent the destruction of the upriver runs.

The PUD's were subsequently ordered to do so by the Federal Energy Regulatory Commission. The Corps of Engineers, BPA, and Reclamation were "persuaded" to do so by the unanimous formal urging of Oregon, Washington, Idaho, and Montana Governors and the personal intervention of the U.S. Secretary of the Interior.

No effort was spared to limit the amount of water diverted from hydropower production to protect the fish. The net amount finally diverted from hydrogenation was about 0.0016 of the annual unappropriated flow of the Columbia River at Bonneville Dam.

Mr. John R. Donaldson, Chairman of the Columbia River Fisheries Council, also was critical of the impacts of dams on the fisheries. He said:

Rivers have altered the seasonal distribution of flow, greatly reducing flow in the spring and increasing it in the winter. A moderate adjustment of the seasonal flow pattern to restore some of the spring freshet is needed. The existing practice of regulating flow of the Columbia River to maximize power revenues, including the export of surplus Northwest power to the Southwest, is the most critical factor causing a severe decline in upriver salmon and steelhead runs above Bonneville dam.

The GAO, in its September 4, 1979 report, responding to the Subcommittee's concern that no single agency appears to be adequately addressing the fish and wildlife problems, said:

No single agency — Federal or otherwise — has been assigned oversight responsibility and authority for maintaining the anadromous fish runs on the Columbia River System. A number of Federal and State agencies and Indian organizations, as well as several interagency coordinating bodies, impact on salmon and steelhead fisheries. The interests represented by these entities are sport and commercial fishing, Indian treaty fishing, agriculture, interstate navigation, flood control, and power production. Responsibility for the protection of salmon and steelhead runs is fragmented and the resources is subject to management by committee.

Fishery maintenance and enhancement is not specified as an authorized purpose of the dams, and the fish runs have no vested water rights. Consequently, fishery management agencies must seek the voluntary cooperation of the operating agencies and utilities of petition the Federal Energy Regulatory Commission (FERC) to provide spills and flows at non-Federal dams that will allow for successful migration of juvenile fish. In March 1979, officials from Federal and State fisheries agencies, Indian tribes, and three electric utilities negotiated until the "eleventh hour" — just before a FERC hearing — before agreeing to the quantity of water to be spilled at utility dams in order to accommodate the spring migration of juvenile salmon.

Existing Federal legislation is not adequate to offset the cumulative impact of the hydroelectric dams of the Columbia and its tributaries on fish and wildlife. To remedy this situation, Mr. Terry Holubetz of the Columbia River Fisheries Council made five recommendations. He said:

Mr. Chairman, the Columbia River Fisheries Council strongly recommends that the following points be incorporated in the Pacific Northwest Power bill: (1) Fisheries must be identified as a major subject area, thereby providing status for fisheries equal to energy; (2) A formal procedure that provided the annual opportunity to the appropriate fisheries agencies and Indian tribes to jointly submit recommendations to the planning Council regarding management measures needed for preservation and enhancement of the fisheries resources; (3) A mandate to the planning Council to incorporate the fisheries recommendation in the plan or to explain through the public hearing procedure reasons for not adopting the recommendation; (4) The Administrator shall include funds for fisheries coordination, research, and development in his annual budget; (5) A directive to the Federal Energy Regulatory Commission to review all licenses of projects that are associ-

ated with the Northwest regional energy system, and to use the authorities vested by the Federal Power Act to insure that the capabilities of each project are fully utilized to provide operations that are compatible with the plan, including the fishery consideration.

The Committee amendment includes provisions to carry out each of these five recommendations.

The Committee recognizes that the Federal agencies and others in the region cannot correct past mistakes merely by enacting a new law, while many such mistakes, unfortunately may be uncorrectable, others can clearly be corrected or avoided. Money, a reasonable amount of time, clear regulatory authority, and cooperative participation by the various interests will be needed to protect and rejuvenate the fish and wildlife resources of this region. It is not the Committee's intention to make fish and wildlife superior to power or other recognized needs. But it is the intention of the Committee to treat fish and wildlife as a co-equal partner with other uses in the management and operation of hydro projects of this region.

The Committee also believes that BPA and others in the region, including the so-called "power interests", concerned with meeting the power needs of the region have in recent times become more concerned about these valuable natural resources. They testified that they are anxious to accommodate fish and wildlife needs. The Committee believes that this is a hopeful sign and that this bill will help to achieve what appears to be a welcome common objective of protecting and enhancing this resource.

SECTION-BY-SECTION ANALYSIS

SECTION 1. *Short title and table of contents*

This section provides the short title, the "Pacific Northwest Electric Power Planning and Conservation Act" and a table of contents.

SECTION 2. *Purposes*

This section establishes five broad purposes which must be considered by the Council and BPA in carrying out the provisions of this Act. These purposes apply to the Pacific Northwest.

The first is to promote conservation and the efficient use of electric power by BPA, all of its customers, ratepayers and others in the region in order to reduce the need for added power sources, and to encourage the development of renewable resources by BPA and others and to assure an adequate, efficient and reliable power supply for the region, consistent with applicable environmental and other provisions of law. It is intended that the interests of consumers be adequately protected by BPA and the Council in carrying out this purpose, including their interest in assuring that power supplies are acquired at the lowest cost possible.

The second relates to the planning and acquisition process established by the Act. It clearly indicates that widespread participation by governmental, representatives, consumers, the BPA customers, users of the Columbia River System, including governmental and Indian fish and wildlife representatives, and the general public is not only encouraged, but expected, in the development of effective plans and programs related not only to energy conservation, renewable sources, and other resources, but also to protection, mitigation, and enhancement of fish and wildlife. It is also an essential element for the orderly planning of the Federal system.

The third purpose is that the BPA customers and the consumers of those customers will continue to pay all of the costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements. These costs include those related to fish and wildlife.

The fourth purpose is, in reality, a savings provision. Subject to the provisions of the Act which impose certain

requirements on BPA customers in return for providing by contract benefits under the Act to those customers, this purpose seeks to assure local and State authorities, private and public utilities, and other non-Federal entities that their authorities and responsibilities will be continued and not usurped by BPA. These entities are not intended to be precluded from acting independently of this Act and, under other provisions of law, are given authority to plan, develop, and operate resources and to achieve conservation.

Lastly, these purposes provide that BPA, the Council, and other Federal agencies must carry out their duties and responsibilities and exercise their authorities to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat of the Columbia River and its tributaries. Of particular importance are the anadromous fisheries which are dependent on suitable environmental conditions that generally can be obtained from management and operation of the hydro facilities to protect, mitigate, and enhance these fisheries.

SECTION 3. *Definitions*

This section defines various terms used throughout the Committee amendment.

Section 3(1) defines "acquire" and "acquisition" to make clear that the Administrator, whether he utilizes this Act or other laws, is not authorized to construct or own any electric power generating facility.

As defined in 3(3), "conservation" requires a reduction in electric power consumption as a result of increased efficiency in energy use, production or distribution, as distinguished from reductions from electric power consumption resulting from power shortages or use of alternate energy resources.

Section 3(4) defines "cost effective" as a term used in reference to conservation measures and resources in sections 4 and 6. Pursuant to this definition, a resource or

conservation method is cost effective when compared with similarly available and reliable alternative resources or conservation methods. It must be forecast to be reliable and available within the time it is needed at an estimated incremental cost no greater than similarly available measures or resources. The cost comparison is done on the basis of incremental, or marginal, costs. All estimated direct system costs of a measure are to be included in the projected costs for the purpose of this comparison. In estimating the amount of power, consideration must be given to appropriate historical experience with similar measures of resources.

Conservation under this definition will be cost effective as compared to other resources if the costs of conservation are no greater than 110% of the costs of alternatives.

The definition of "consumer" in section 3(5) serves to distinguish between consumers of power and customers of Bonneville. It does not include the DSI's who are BPA customers.

Section 3(6) defines the Pacific Northwest Electric Power and Conservation Planning Council established by section 4. The "Council" is defined as the voting members appointed to the Council, as distinguished from other Council members who have no vote.

Section 3(7) defines "customer" as anyone who purchases power directly or wholesale from the Administrator; it includes the direct service industrial customers.

Section 3(8) defines a "direct service industrial customer" as an industrial customer that purchases power from the Administrator directly. The definition does not seek to limit those entities who fall under this definition.

Section 3(9) defines "electric power" to mean electric peaking capacity or electric energy, or both. Except where explicitly provided, there is no need in this bill to distinguish capacity from energy.

As defined in section 3(10), "Federal base system resources" means existing and future Federal Columbia River hydroelectric projects, resources already acquired by the Administrator under existing contracts (including the capability of "net billed" plants), and future resources that may be acquired in accordance with this Act to replace the hydroelectric facilities or resources under existing contracts.

Section 3(12) defines "major resources" as any resource acquired by BPA for a period of five years or more having a planned capability of greater than 50 average megawatts. The term however, does not include power purchased under other authority in accordance with the Transmission Act to meet short-term deficiencies in electric power which Bonneville is obliged by contract to supply. Section 6 sets forth separate procedures for acquiring such major resources.

Section 3(14) defines "new single, large load", a term used in the rate provisions of section 7(b)(4) and the sales provisions of section 5(c)(7). In order for a load to be new, it must have the following elements: (1) increase a customer's total power requirements by greater than ten average megawatts and must come on line during any 12-month period; (2) the load must be contracted for, or committed to, by a public body, cooperative or Federal agency customer prior to October 1, 1978 if it is an industrial load or September 1, 1979 if it is other than an industrial load; (3) the load must be new to the system or an existing load not previously served by a preference utility.

This is an important definition in many respects. Although the Administrator will be obligated to sell power to meet these loads, power for new large single loads will be sold at the section 7(f) rates which are likely to be the marginal cost of power. Consequently, enterprises new to the Region will have to pay rates at least as high as rates charged for electric power in other regions unless other electric power consumers want to subsidize the industry.

The definition also will serve to induce DSI's to terminate their existing contracts in favor of new long-term contracts to be offered under section 5(d). The DSI's would, if they could obtain service, be treated as a new large single load and thus subject to the 7(f) rate. This rate would be higher than the rates they would pay under the contracts offered under this bill.

This definition also has application under the section 5(c)(1) exchange. The "average system cost" of the power sold to the Administrator by investor-owned utilities pursuant to this section must exclude the cost of resources needed to serve a new large single load. Thus, the cost of serving new large loads will not be averaged in BPA rates applicable to sales for general requirements of preference customers and for IOU's, residential and small farm customers.

The Committee amendment refers to new loads that are not "contracted for, or committed", as determined by the BPA, prior to the specified dates. The Committee expects the BPA to examine carefully claims that a facility is not a new large single load. The Committee understands that while in some cases actual written contracts do not exist to support such claims, there otherwise is a clear history to support the claim. One large single load, the Mount Tolman Project, which include mining activities cooperatively carried out with Indian and private interests, located on the Coleville Indian Reservation, which would be served by the Ferry County PUD, has such a history. The project was initiated in 1964 and is of special significance in the region. The Committee believes, on the basis of information provided to it, that this large single load would qualify as a committed load.

"Renewable resource" is a resource which uses only regenerative or essentially inexhaustible energy sources, such as solar, wind, hydro, geothermal, biomass, or similar sources of energy either for electric power generation or reduction of a customer's electric power requirements. This

may include direct application devices to reduce power demand. "Breeder" or "fusion" projects cannot qualify as a renewable resource.

Section 3(18) defines "reserves" as the electric power necessary to avert planning or operating shortages of the firm power loads within the region. These reserves can be obtained from contract rights to interrupt portions of electric power supplied to customers or from other resources.

Section 3(19) defines the term "residential use" or "residential loads" as all usual residential or apartment dwellings, including all the first 200 horsepower (cumulative) during any monthly billing period of farm irrigation and pumping loads. This 200 horsepower limit is likely to embrace all "family farms" in the region and some large corporate farms. Large corporate farms that do not qualify would be treated the same as commercial and industrial customers of IOU's.

The term "resource" as defined in section 3(19) includes actual or planned electric power capability as well as reduction in electric power consumption. Thus, conservation could be treated as a resource for the purpose of resource acquisition or billing credits pursuant to section 6. The term "planned" as applied to electric power capability reflects the Committee's recognition that the actual power produced or reduced may be different than the amounts planned to be produced or saved. It is not intended that the BPA Administrator contract for power which he has reason to know will never be produced or will not reduce load.

SECTION 4. *Regional planning and participation*

Section 4(a) establishes by statute a 12-member Pacific Northwest Power Planning and Conservation Council, composed of 11 voting members (4 from Washington, 3 from Oregon, 2 from Montana and 2 from Idaho). The Administrator is an ex officio non-voting member. The voting members are appointed by the Secretary of Energy upon the

recommendation of the Governor of each State. The appointment by the Secretary addresses concerns expressed by the Department of Justice in an October 18, 1979 letter to Chairman Dingell that certain Council functions require that they be appointed consistent with the Appointments Clause, Article II, section 2, clause 2 of the Constitution.

This section provides the procedures to be followed in the nominating and appointing of voting members. The procedure is designed to ensure early appointment of Council members and broad participation by the States in appointing qualified people to serve on the Council. While the Secretary must select nominees from a State list submitted in a timely fashion, the Secretary need not appoint each State nominee, but may decline to do so for any reason. The Governor must provide adequate data about the education, experience, background, and other pertinent data to the Secretary, including data to ensure that the appointee meets the requirements of the Ethics in Government Act of 1978. The Committee expects the States and the Secretary to work together to appoint persons who are well-qualified and who will enjoy the support of a wide spectrum of the public.

The Secretary is authorized to appoint additional non-voting members individuals he determines appropriate. They may include other Federal officials responsible for the Federal Columbia River Power Station hydroelectric projects and for fish and wildlife affected by such system, as well as representatives of Indian tribes, and from the public.

Voting members who are not Federal or State employees will be paid for the actual days they work as Council members, although there is a total annual limit on such compensation. They shall also be allowed travel expenses. All voting members are subject to the Ethics in Government Act of 1978.

Section 4(a)(6) establishes a majority of Council voting members as a quorum and that, except as otherwise pro-

vided specifically in the bill, all actions and decisions shall be by majority vote of the voting members present and voting. This section also provides that in voting for the plan or any amendment thereto the majority must include at least one member from each State. This provision will better ensure that the interest of each State is protected and no jeopardized by a cooperative effort by other States. The Committee believes that it will not be useful to allow a majority of the Council, which could be composed of members of just two States, to approve a plan that applies to all States, unless at least one of the Members representing all the States approve it. The Committee does not favor State vetos in general and this is not a State veto in the normal sense, but in reality, if one or more States object, the plan will probably have little chance of success. A plan will probably never be effectively implemented without State participation.

Section 4(a)(7) provides procedures for the selection of a Council chairman from among the voting members, and procedures for the call of meetings. It further provides opportunities for the submission of a statement of dissenting or additional views by a voting member disagreeing with a Council action or wishing to state additional views.

Section 4(a)(8) through (14) provides the various administrative authorities and obligations of the Council and procedures for establishing the Council's budget and funding. Some of these include: appointment of an executive director and other staff personnel who shall be Federal employees; the authority to request personnel from other Federal agencies; authority to obtain expert and technical studies from other organizations within the region; the authority to enter into contracts in accordance with provisions of law applicable to the Department of Energy; obtaining offices and support from GSA; and determining its organization, practices and procedures, including the annual work program, and the making of such information available to the public.

As for the Council's budget the Administrator must include in the BPA budget the funds necessary for the Council to carry out its responsibilities. The total amount shall be no greater than .02 mills times the kilowatt hours sold by the Administrator the previous calendar year. Anticipating that this ceiling may be too limited, the Committee provided a procedure whereby the Administrator may raise the amount to .10 mills. The Committee expects the BPA and the Council to be judicious in utilizing this authority. To insure this, the procedure requires an annual showing to BPA by the Council of the basis for any request for added funds which must be public. The raise allowed for one year will not automatically be applied in the next.

The Council is a Federal agency, but has a semi-independent character, i.e., it is independent of the BPA. Its principal role is planning and advisory. It is subject to various Federal laws, such as the Freedom of Information Act, the Federal Advisory Committee Act, and Federal procurement laws.

Section 4(b) requires the Council to establish a voluntary scientific and statistical advisory committee to assist it in developing information relevant to the Council's development of a plan. Section 4(c) permits the Council to establish other voluntary advisory committees.

Section 4(d) sets forth the principal responsibility of the Council. The Council is directed to prepare and adopt within two years a regional conservation and power plan. This section permits amendment to the plan and requires review at least every five years. This subsection also requires that hearings be held, prior to adoption of the plan or amendments, in Washington, Oregon, Idaho, and Montana and in any other State in the region which the plan or amendments might impact through the acquisition of resources. 5 U.S.C. 553 shall apply to such hearings. The hearing process provides broad input and participation in the development of a plan and any amendments.

The Committee is concerned that the Council, with its myriad duties, may not meet this planning deadline, particularly if there is a delay in the appointment of Council members. The deadline is intended to be met and it can be met, if all in the region cooperate. While failure to meet the deadline will not result in any penalty, the plan will still be required. Although delay should be avoided, the Committee does not intend that the Council adopt a weak and ineffective plan merely to meet the deadline. A sound and competent plan is expected.

In order to insure that the Administrator, in meeting his obligation, will pursue cost effective conservation and renewables before other cost effective conventional resources, the plan, pursuant to section 4(e)(1), must give priorities to certain resources on a cost effective basis: (1) conservation, (2) renewable resources; (3) resources using waste heat or having high fuel conversion efficiency, and only then all other resources. In each case, a priority must be provided to resources determined by the Council to be cost effective. The Committee is of the view that by establishing conservation and renewables as priorities, the conservation and renewable resource objectives of the bill will be enhanced. This emphasis on conservation in planning for the region is intended by the Committee to be clearly followed. It is the cornerstone of the planning process.

Section 4(e)(2) requires that the plan set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6. Thus, the plan will outline how the objectives contained therein are to be reached. The Council, in developing the general scheme, must give due consideration to: (A) environmental quality; (B) compatibility with existing regional power systems; (C) protection, mitigation and enhancement of fish and wildlife and related spawning grounds and habitats, including sufficient quantities and qualities of flows for successful migration, survival and propagation of anadromous fish; and (D) other criteria which may be set forth in the plan.

Section 4(e)(3) sets forth some of the specific elements a plan must include: (1) an energy conservation program, including model conservation standards; (2) recommendations for research and development; (3) a methodology for determining "quantifiable environmental costs" under subsection 3(3); (4) a 20 years demand forecast for the region; (5) an analysis of cost effective methods of providing reserves; and (6) if the Council recommends, conservation surcharges which BPA may impose on its customers.

The demand forecast will be the Council's estimate, developed with considerable public and BPA input, of the resources needed to meet the BPA's obligations under this Act. It will include the Council's determinations of the BPA obligations which can be met by resources in each of the section 4(e)(1) priority categories. The Committee views the development of a conservation program and the preparation of a reliable demand forecast to be priority matters for the Council's attention because so many of the Administrator's actions are dependent on these considerations.

Section 4(f) addresses the conservation standards to be included in the plan. These standards apply, but are not limited, to (A) new and existing structures, (B) utility customers and governmental conservation programs, and (C) other consumer actions for achieving conservation. The Committee intends that these standards not be applied in a manner that discriminates against any class of customer or consumer.

Pursuant to section 4(f)(2), the Council may recommend, and the Administrator may impose, a surcharge. It would be for those portions of a customer's loads within States or political subdivisions which have not, or for customers which have not, implemented conservation measures applicable to such customers that achieve energy savings which BPA determines are comparable to those obtained under the model conservation standards. The bill provides that surcharges would not be imposed where the Administrator determines with comparable results have

been achieved by the customer through means other than those specifically included in the plan. If implemented, surcharges are to be set to recover the costs attributable to the Administrator on account of the failure to achieve the energy savings projected from such conservation measures. However, there is a 10 percent floor and 50 percent ceiling on surcharges for each customer. The surcharge would be imposed on the customer by BPA, in order to provide substantial incentives for States and localities to adopt effective conservation measures and thus accelerate achievement of conservation objectives. At the same time, with the limits imposed on the surcharges, States' and localities' prerogatives are reasonably protected.

Section 4(g) seeks to insure broad public participation in the development of regional power policies. The bill provides opportunities for the Indian tribes of the region to participate in the Council's activities. The Committee believes that their participation should help to ensure widespread acceptance of the plan. The Committee has been assured by their representatives that they want to cooperate in carrying out the bill's purposes.

Section 4(h) is designed to provide effective procedures and authorities whereby fish and wildlife of the Columbia River Basin will be treated on a par with power needs and the other purposes for which the hydroelectric dams of the region were built and are operated and maintained. This should ensure a balance for all uses of the river.

Once the Council has been appointed and it begins its task developing a plan, it must send a written request to all of the State fish and wildlife agencies in the region, the Federal Bureau of Sport Fisheries and Wildlife, the National Marine Fisheries Service, and the appropriate Indian tribes located in the region for appropriate recommendations. Each will have a minimum of 90 days to reply, although this period may be extended if necessary. The Committee expects the Council to be reasonable in respond-

ing to requests for extensions and that the above entities will act promptly to develop effective recommendations.

The recommendations must be accompanied by data to support them. The better the data, the more likely it is that the recommendations will receive wide support. While the Committee believes it reasonable to expect organizations with fish and wildlife expertise to be able easily to provide needed support data, the Committee also recognizes, and the Council should also, that 90 days will not afford an opportunity for extensive studies, the acquisition of new data, or the development of the best scientific knowledge. The data requirement is to enable the Council and others to understand the recommendations. The quantity or quality of the data should not serve as a basis for turning down any recommendation.

Once recommendations are made, an expedited public review process, including hearings, and an opportunity for power interests and others to also submit comments and recommendations, will be conducted by the Council. Thereafter, if the Council determines that any recommendation is not inconsistent with the purposes of this Act, the recommendation must be adopted by the Council. The Committee wants to stress that adoption of these recommendations is not intended to be delayed pending adoption of any plan or revision; the Council should act promptly on all recommendations. Also, the amendment clearly contemplates that the Council and these entities will, to the greatest extent possible, work together to develop effective and workable recommendations. The Council is not asked to rubber-stamp any recommendation. However, neither is it expected that the fish and wildlife agencies or Indian tribes shall be required to agree with each other or with the power interests and others in the region to what might be aptly described as "consensus" recommendations in order to satisfy all interests. Any determination must set forth the reasoning in support of that determination and will be subject to judicial review.

The recommendations are clearly required to include, as appropriate, a broad range of measures which could, for example, be regulatory or management-type, to "protect, mitigate, and enhance" fish and wildlife and their spawning grounds and habitat. The objective is to give flexibility to all concerned to devise effective and imaginative measures that are also reasonable and will not result in unreasonable power shortages or loss of power revenues. Some power losses, with resultant loss in revenues, may be inevitable at times if these fish and wildlife objectives are to be achieved. Such losses, however, should not be a burden on the consumers of the region. The objective, however, should be to avoid, or at least minimize, losses, while meeting fish and wildlife needs. The Committee does not intend that these provisions be used to subvert the power objectives of this bill.

It has been suggested that the terms "protect, mitigate and enhance" should be defined. The Committee did not choose to do so in recognition of the fact that these terms are not new to those concerned with this resource, and because such a definition might later prove more limiting than anticipated.

At the same time, the Committee does not intend that these terms be construed in broad terms that biological and economic considerations will be totally ignored. They must be considered. However, cost should not be a deterrent if a fish and wildlife need might be sacrificed to save dollars.

SECTION 4(h) also requires the BPA to use the BPA fund its statutory authorities to protect, mitigate, and enhance fish and wildlife in a manner consistent with an adopted plan, including the above recommendations, and with the purposes of this legislation. It is important to stress once again that the recommendations may well precede the plan. If so, BPA and others should not delay their implementation pending adoption of the plan which will incorporate these recommendations.

Section (h) also provides a directive to BPA and other Federal agencies responsible for the management or operation or regulation of hydro facilities on the Columbia or its tributaries to adequately protect, etc., fish and wildlife affected by such facilities in a manner that ensures equitable treatment for fish and wildlife with other purposes for the facilities. This provision does not replace other provisions of law such as FERC's section 10 of the Federal Power Act, but supplements it. This provision is also aimed at placing fish and wildlife on a par with these other purposes.

Section 4(i) requires actions of the Administrator pursuant to section 6 to be consistent with the plan and amendments thereto unless otherwise provided. This subsection also provides that, except in the case of major resources which are subject to section 6(c), the Council shall advise the Administrator of those section 6 actions it will review for consistency with the plan. Thereafter, the Administrator must make an initial determination of consistency for proposed actions and notify the Council at least 60 days prior to taking such action. Within 60 days thereafter, the Council may direct the Administrator to hold a hearing as to the consistency of the proposed action with the plan. A failure by the Council to require a hearing is deemed a determination that the proposed action is consistent with the plan. After the hearing, BPA makes the final determination.

The requirement that actions be consistent with the plan is vital to the plan's effectiveness. However, the Committee is of the view that procedures available to check on such consistency should not be used in such a way as to frustrate the overall purpose of the plan or BPA in meeting its obligations. Any final determination by the Administrator to proceed is judicially reviewable pursuant to section 9(e).

Section 4(j) permits the Council to request the Administrator to take certain actions under section 6 to carry out BPA's duties under an adopted plan.

Within 90 days after receipt of the Council's request, the Administrator must indicate how he will carry out the

request or any portion thereof, or explain why he believes the action to be inconsistent with the plan or his contractual obligations or other provisions of law and give reasons therefor. If the Administrator decides not to carry out the Council's request, the Council can require a section 7(i) hearing on the Administrator's decision and the proposed action. BPA's final decision must be based on substantial evidence, but this does require a proceeding under 5 U.S.C. 554-557.

The Committee has included this rather extraordinary authority for the Council to provide it with a limited check on the extent to which the Administrator implements an adopted plan. It is intended that the Council use this authority judiciously. Clearly, some effort should be made by the Council to consult with the Administrator in advance of triggering this provision to minimize problems and to encourage voluntary actions by BPA. At the same time, the Administrator should cooperate and be receptive to the Council's suggestions. Clearly, the BPA has flexibility to adopt the proposed actions with modifications, if necessary in order to avoid a complete rejection of the suggestion.

Similarly, the Committee included subsection (i) as a means to check on BPA's actions under section 6. Of course, before the Council can exercise this authority, there must be a plan, and so prompt plan development and adoption is important. The Council and the BPA Administrator should work together. The Council need not rubberstamp the BPA actions. However it should also be flexible. Both should always keep an eye on the purposes of this bill and make sure that their proposals are always consistent with those purposes.

Once the plan is adopted, the Council's expenditures should not be as great as they may be prior to planning. At that same time, the Council has a continuing and important role under subsections (h), (i), and (j) in addition to its responsibility to review the plan and consider future

changes. The Council is expected to exercise its responsibilities under section 4 carefully and diligently.

Section 4(i) and (j) require that such hearings be conducted in accordance with procedures set forth in section 7(i). Those procedures, if misused, could frustrate the objectives of the Committee in reporting this legislation. The requirement that actions be consistent with the plan is vital to the plan's effectiveness. However, the Committee does not intend that the procedures available to check on such consistency should be used by the Council or any interested person in such a way as to frustrate the overall purpose of the plan or the BPA in meeting its obligations. To avoid such a possibility, the Committee expects the hearing officer to carry out his duties expeditiously and fairly. Although an adequate record is needed, delay is not.

Any final determination by the Administrator is judicially reviewable pursuant to section 9(e).

Section 4(k) reaffirms the bill's intent to encourage broad participation in the planning process. By soliciting opinions from its customers, the Administrator and the Council will have access to additional valuable information. This section also affirms the bill's intent not to abridge authorities of State and localities, electric utilities and other non-Federal entities. Similarly, section 4(l) provides a mechanism to open the planning process to regional governmental bodies' ideas and initiatives, including Indian tribes.

Section 4(m) requires that by October 1, 1986, the Council conduct and complete an analysis of conservation measures implemented and renewable resources acquired under the Act since enactment for the purpose of making certain determinations set forth in this section. Once the BPA receives the Council's analysis (which shall be available to the public) the Administrator may determine that section 3(4)(D) shall no longer apply any particular conservation measure or resource if he finds any result or effect

described in the referenced section. Like other BPA determinations, this one is also subject to judicial review.

SECTION 5. *Sale of power*

Section 5(a) makes clear that all power sales, including exchange sales, under this bill are subject at all times to the preference provisions of the Bonneville Project Act, as discussed earlier in this report. These provisions retain and assure preference and priority in BPA power sales to public bodies and cooperatives. This provision works together with a number of other provisions contained in this bill (section 5(b)), which provides that sales to preference customers cannot be restricted to less than the full amount of power from Federal base system resources; section 5(b)(2) which states that the five-year pullback provisions of the Project Act will apply to all investor owned utility contracts; section 7(c)(1)(A) tying the rate for preference customers to the costs of Federal base system resources; and the rate ceiling in section 7(b).

Section 5(b)(1) requires the Administrator to offer to sell to each preference agency and to each investor-owned utility the firm power it needs to meet its firm power load within the region to the extent that it cannot meet its load with its own resources. Those resources must be the resources that will be used to serve its firm load in the region.

Section 5(b)(2) is a reaffirmation of the five-year pullback provision of the Bonneville Project Act.

Section 5(b)(3) authorizes the Administrator to sell electric power to Federal agencies in the region. Although Federal agencies are not preference customers, these Federal agency customers have depended upon the Administrator for power supply. It is intended that BPA will continue to serve them.

By requiring that preference customers, IOU's and Federal agency customers comply with the Administrator's standards for service, Section 5(b)(4) ensures that the

Administrator will not be required to serve any technologically-unprepared customer that cannot meet the necessary technical service criteria. BPA may periodically review and revise these standards.

Pursuant to section 5(b)(5), the Administrator is to include in the contracts for the sale of power to utilities provisions permitting restriction of his obligations to meet such customers' full requirements during any period of insufficiency. In the case of public bodies, cooperatives and Federal agencies, the contract must specify a reasonable period between the date the notice is issued and the date it is to take effect. With the authority to acquire power, such insufficiency would be for that period of time required for BPA can acquire additional power resources. The phrase "on a planning basis" is intended to clarify that BPA will make determination of power entitlements or allocations on reasonable future estimate, under this section. This does not reach power deliveries during operating curtailments which is a matter for State and local governments.

By specifying the amount of power to which preference customers and Federal agencies are entitled, Section 5(b)(6) ensures compliance with the preference clause by guaranteeing that preference customers as a group and Federal agencies may not be contractually restricted until their loads exceed the firm capability of the Federal base system resources. It also permits individual preference customers better to plan to meet their future powers needs by enabling them to determine the minimum amount of power they will receive in the event of an insufficiency.

SECTION 5(c) permits power exchange and power sales whereby rate relief will be provided residential customers of investor-owned utilities. Although all utilities are permitted to enter into such sales, its benefits are likely to be limited to utilities that are not entitled to service as a preference customer. The sale is permitted where a utility offers for sale to the Administrator an amount of electric

power equal to that utility's residential load. When such an offer is made the Administrator shall acquire, by purchase, such power at that utility's average system cost and shall offer to sell the same amount of power back to the utility at the rate charged preferenced customers for their general requirements for resale to that utility's residential users within the region only. There is an exception for utilities where service lies both within and without the region as defined in section 3. The requirement is not likely to result in parity in the retail rates being paid by customers of preference customers and consumers of investor-owned utilities, but it should equalize the wholesale costs of the electric power with a resulting benefit the investor-owned utilities' customers.

Average system cost is established pursuant to section 5(C)(7) and the rates for resale are established under section 7(b)(1). Section 5(c)(2) ramps in the exchange from 50 percent of the residential load in the year beginning July 1, 1980 to 100 percent in the year beginning July 1, 1985.

The cost of the exchange during the first five years is charged to the rates applicable to DSI's under section 7(c)(1)(A). Testimony given to the Committee indicated that it was necessary to phase in the exchange in order to minimize the dramatic rate increases to the Administrator's direct service industries.

SECTION 5(c)(3) requires that the benefits of this exchange be passed directly through to residential customers.

SECTION 5(c)(4) permits a utility to terminate the exchange if the rate ceiling of section 7(b)(3) is applied and the resulting surcharge makes the exchange uneconomic to the utility. The terms and conditions of any termination must be mutually agreed to in advance of any termination.

SECTION 5(c)(5) provides that although the Administrator must offer to sell an amount of power equivalent to the residential load of the utility, BPA may obtain the power from other sources if it is available at less cost

than the cost of purchasing the power offered by the utility. Such acquisitions are subject to the provisions of sections 4 and 6.

Pursuant to section 5(c)(6), a utility exchanging power under this section will receive, in the event of insufficiency, an entitlement to the amount of power acquired by the Administrator from, or on behalf of, such utility and the exchange of power would continue during period of declared insufficiency.

Section 5(c)(7) provides for establishing the "average system cost," as that term is used in section 5(c)(1) by BPA in consultation with the Council, BPA's customers, and the State ratemaking agencies. This method is subject to review and approval by the Federal Energy Regulatory Commission. The average system cost may not include (a) the cost of additional resources needed to serve new large single loads, (b) the cost of additional resources needed to serve load growth outside the region, (c) the costs of any generating facility which is terminated prior to commercial operation. The term "new large single load" is defined in this section to mean any load that will result in an increase in power needs of 10 or more average megawatts in any consecutive 12-month period.

Section 5(d) authorizes the Administrator to sell power to existing direct service industrial customers that have a BPA contract at the date this bill is enacted. Initial long-term 20-year contracts are to be offered by BPA to these customers in accordance with section 5(g). In return for these new contracts, the DSI's would have to agree to terminate their current contracts. Subsequent contracts for these DSI's are authorized but not mandated. The initial contracts shall provide each direct service customer an amount of power equivalent to that which such customer is entitled under its existing contract dated January or April 1975 for the sale of "industrial firm power." These power sales to these existing direct service customers will also provide a portion of the Administrator's reserves for

firm power loads within the region. The bill is silent on peaking reserves, but it is presumed that they would be similar to those under present contracts.

The amount of power the DSI's are entitled to receive under these initial contracts is expressed in section 5(d)(1) in terms of an entitlement under their present contracts, rather than in terms of the amount of power being used at a particular time.

The contracts with the DSI's now provide reserves for the region. These are basically capacity reserves and energy reserves. Under certain conditions, BPA can interrupt power sold to DSI's. Capacity reserves permit brief interruptions of the entire DSI load and repeated two-hour interruptions (up to five minutes) of half the load. In this manner, the authority to interrupt provides peaking reserves and reserves for forced outages and system reliability. The energy reserves are of two types, an operating reserve and a planning reserve. An operating reserve of roughly 25 percent of the DSI load which may be interrupted including instances of low or critical stream flow conditions or an account of the unanticipated growth of regional firm loads; in order to protect the Administrator's firm loads within the region at any time and for any period, as determined by BPA. A planning reserve is an additional 25 percent of these DSI loads which may, upon advance notice, be withdrawn to protect firm loads from projected peak and energy deficits caused by the Administrator's planned resources being delayed or available at a lesser capability than planned.

The BPA provides credits to the DSI's for power interruptions under current contracts. The GAO, in its September 1979 report, discussed the credits then established for such interruptions as follows:

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ber 1979 report, discussed the credits then established for such interruptions as follows:

When BPA exercises the right to interrupt the DSI loads for more than one hour, it grants the DSI's discounts known as availability credits. During a 3½ year period (January 1975 through June 1978) BPA withheld almost 9 billion kilowatt hours of energy, which is equal to about 9 percent of the total planned DSI load for that period. For these interruptions, the DSI's were granted a total of almost \$38 million in credits — about 14 percent of BPA's gross sales to them.

When they are interrupted, DSI's are granted availability credits in a series of steps. The first step grants a credit of almost \$7 million to be shared by all the DSI's when the power interruption lasts for more than one hour but does not exceed 5 percent of the total energy requested during the year. The next step grants an additional \$10 million credit when the energy restricted exceeds 5 percent but is not 10 percent.

The GAO also said in the report that during January 1979, such credits tended to cause BPA power system schedulers to delay interruption of DSI loads because of the cost to BPA. However, they ultimately did so.

The BPA has since revised these credits and is expected to examine them again in connection with the new contracts.

The Committee amendment calls for new DSI contracts. The amendment does not require that they be identical to the current contracts concerning reserves, credits, and other matters, but provides BPA with considerable flexibility to prepare and negotiate contracts and adopt rates that insure that conditions relating to reserves are not so stringent as to render the reserves provided by the DSI's largely ineffective. As noted, the GAO expressed concern that previous rates adopted by BPA for DSI sales inhibited the use of reserves furnished by the DSI contracts.

Additionally, since the linchpin of this legislation is conservation and regional planning, the Committee expects that the DSI's will do their part to conserve energy and cooperate with BPA and the Council in the implementation of any plan adopted by the Council.

The Committee is aware that one of the direct service industrial customers entitled to an initial contract under this section, Alumax Aluminum Co., has not begun construction of its proposed aluminum reduction plant at Umatilla, Oregon, because of litigation and other factors. Since the Pacific Northwest faces potential major power shortages in the early to mid-1980's, the BPA should examine whether the initial contract offered Alumax should provide for delayed construction and operation of the plant to allow the region to cure the predicted power shortages. Further, before power is acquired by Bonneville to serve this load, there should be contractual assurances regarding the dates of completion and operation of the reduction plant.

Section 5(d)(2) expressly prohibits sale to new DSI's.

Section 5(d)(3) prohibits BPA from selling to existing DSI's amounts of power in addition to their entitlement except in accordance with strict procedures. These procedures require the BPA to determine that such sales are consistent with the plan. Also, the Council must approve such sales. This limitation and the amount of power available to DSI's should serve as significant incentives for the DSI's to conserve that power for the purpose of additional DSI production.

Under existing contracts, the DSI's quality to receive additional power for the purpose of making improvements not related to increasing a DSI facility's level of production. The Committee understands that this has been interpreted by BPA to include such measures as pollution control devices which, of course do not, relate to a facility's production. Although this power is probably included as part

of the current entitlement of the DSI's, the Committee expects the BPA to be assured that such power does not fall into the category of new power sales to increase production under such 5(d)(3).

Section 5(e)(1) insures that customers' contractual entitlement to firm power will not be restricted below the amount of power which they are providing the Administrator pursuant to section 6 and further requires that any excess of such entitlement in any given year shall be made available to other customers of the same class. This section also defines which customers are of the same class. Section 5(e)(2) ensures that entitlements of a customer (under subsection (e)(1) are additive.

Section 5(f) provides that power that is not needed to meet BPA's obligations under subsections (b), (c), and (d) is to be sold in accordance with this Act and existing law.

Section 5(g)(1) specifies that the Administrator must simultaneously offer appropriate customers the initial long-term 20-year contracts and initiate negotiations with such customers within nine months after enactment. The customer has one year to complete negotiations and accept the offer or lose the benefits of these provisions.

Section 5(g)(3)-(5) concern the acceptance and effective date of power sales contracts under the Act and in particular, ensure that the benefits of the 5(c) exchange begin on a specified date even if the DSI contracts are not executed until later.

Paragraph 5(g)(6) places a floor under the power entitlements of individual public body, cooperative and Federal agency customers in the event of an insufficiency during the initial contract. A minimum contractual entitlement enhances the customers' ability to plan.

Section 5(g)(7) is intended to ensure that a challenge (on the basis that the Administrator lacks legal authority on account of insufficient power resources) to the initial

contracts required to be offered under this Act will not be sustained. In obtaining new resources, however, BPA must do so in accordance with this bill. This provision does not override any other provision of this bill. To the extent that additional power is required to meet these initial contract commitments, BPA can use its existing short-term authority as well as its authority under this Act.

SECTION 6. *Conservation and resource acquisition*

Section 6(a) requires the Administrator to acquire conservation, conservation measures and renewable resources installed by residential and small commercial consumers in meeting his obligations to satisfy the load of his customers. These measures and resources must be consistent with the priority tests of section 4(e)(1) and the considerations of section 4(e)(2). The Administrator need not await a plan to utilize this authority. He must, however, apply these section 4(e) provisions to the proposed acquisition. A nonexclusive list of authorized conservation measures is provided in this subsection.

Section 6(a)(3) contains the BPA's authority to acquire resources other than conservation and end-use renewables to meet contract obligations after taking into account conservation. This expanded authority is distinguishable from the Administrator's existing authority in accordance with the Federal Columbia River Transmission Act which permits the Administrator to purchase power on a short-term basis to meet temporary deficiencies in electric power which he is obligated by contract to supply.

Except as specifically provided elsewhere, section 6(b) provides that acquisition of resources pursuant to section 6 are to be consistent with the plan developed by the Council under section 4. If the resources are not consistent with the plan, or if there is no plan in effect, then the Administrator may acquire these resources so long as the Administrator determines that they are consistent with the priorities and considerations of section 4(e)(1) and 4(e)(2). This

determination, where the resource is not consistent with the plan, is subject to the procedural requirements of section 4(1). If the resource is a major resource, the acquisition must be in accordance with section 6(c).

In acquiring a resource under this section, the Administrator will not own or construct any generating resources. The Administrator's acquisition will be by contract to pay for the capability or, in some cases, a specific amount of power from a utility's system or power associated with a generating resource or conservation resource or group of resources.

Section 6(b) stresses the BPA, in acquiring these other resources, shall not reduce efforts to achieve greater conservation.

Section 6(c) sets out the procedures for the acquisition of a major resource, the implementation of a conservation measure that will conserve an amount of power equivalent to a major resource, an agreement to reimburse investigations and pre-construction expenses for a major resource or to grant billing credits or services involving a major resource. For each such proposal, the Administrator must (A) publish notice, with copies to the Council and, as appropriate, the Governor of a State where a facility is to be constructed or a conservation measure implemented; (B) conduct public hearings; (C) develop an administrative record; and (D) prepare a written discussion, including a determination of whether the proposed acquisition is consistent with the plan, or notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligation under this Act. If no plan is in effect, then the Administrator must find that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

If either the Administrator or the Council determines that the proposal is not consistent, the Administrator may not proceed until the expenditure of funds for the proposal

has been specifically authorized by an Act of Congress through the budgetary process required under the Transmission Act. After that, he must wait 90 days. All acquisitions must comply with all applicable environmental laws, as well as other applicable laws.

Section 6(d) authorizes the Administrator to acquire a non-major resource which is experimental, developmental, demonstration, or a pilot project type so long as the resource is a potential for cost-effective service to the region is included in the Administrator's budget submitted to Congress. Again, "acquisition" does not include actual construction.

Section 6(e) provides a list of certain of the Administrator's conservation authorities and requires that the Administrator make maximum practicable use of such authorities to give effect to the priority for conservation and direct-applications renewable resources. Section 6(e)(2) explains that to the extent conservation measures or resource acquisitions require direct arrangements with consumers, the Administrator shall make maximum practicable use of his customers and local entities.

Section 6(f) authorizes the Administrator to support the sponsors of resources that the Administrator determines may be eligible for future acquisition. For such resources, the Administrator would be authorized to enter into agreements with the sponsors of any resource to reimburse certain expenses. If the resource is renewable, but not a major resource, the Administrator can fund or secure debts incurred in the investigation and initial development of such resource.

In the case of resources, other than these renewable resources, the BPA can reimburse investigation and pre-construction expenses (not including the costs of capital equipment or construction material) subject to the following requirements: (1) the reimbursement may only be exercised where the Administrator determines at the time

of the contract that a failure to do so would result in extreme or unusual hardship; (2) it can only reach expenses incurred after enactment of this Act; (3) the agreement shall provide the Administrator with an option to acquire such resource; (4) the agreements provide that if the resource is ultimately developed, then the developer shall pay all such expenses; (5) it is authorized only if the resource is subsequently denied State siting approval or other necessary permits, the investigation subsequently demonstrates that the resource does not meet the bill's criteria and considerations for acquisition, or if the Administrator decides not to purchase the resource and the sponsor decides not to construct it; (6) the agreement provides that the Administrator will recover any funding in the event that the sponsors decide to construct the resource after the Administrator has decided not to acquire it. Expenses incurred by a sponsor after denial of a State siting approval or after BPA's determination about the relationship of the resource to the plan or section 4(e) are not reimbursable, excepting those reasonably necessary for the liquidation of the resource.

The purpose of this section is to permit the region where necessary to share certain resource sponsor expenses when it is anticipated that the region will be sharing in the benefits of this resource.

Section 6(g) makes clear that the preparation of joint State and Federal environmental impact statements apply to resources acquired under this Act is encouraged as provided by existing laws and regulations.

Section 6(h) authorizes the Administrator to grant billing credits to customers and provide services if, by undertaking independent conservation or resource programs, they reduce the Administrator's obligation to acquire resources. These are both mandatory credits and discretionary credits, but in either case, the amount of the credit can never be set at a level that results in costs for the Administrator's other customers greater than the costs

those customers would have experienced had the Administrator acquired the needed resources directly.

Mandatory credits apply to: (a) independent conservation activities of BPA customers or political subdivisions served by those customers which reduce BPA's obligations to acquire resources; and (b) independent resources of customers or political subdivisions constructed, completed, or acquired after the effective date of this Act and which also reduce BPA's obligations. This latter category is renewable, multipurpose projects, or other resources.

Discretionary credits apply to resources that reduce the obligation of the Administrator to acquire resources and that are not inconsistent with the plan, or if no plan is in effect, not inconsistent with section 4(e)(1) and (2).

Calculations of power savings are to be based on actual change in customers' requirements for power or reserves. It is the Committee's intention that for eligible resources receiving some financial assistance from the Administrator such assistance will be subtracted from the calculation in determining the net credit for that resource and that eligibility for billing credits shall cease if the Administrator acts pursuant to the plan to acquire the resource or mandate the conservation program. The Committee also views participation shares in a jointly-owned or operated resource as creditable resources of the participant, if they meet the requirements of this subsection. There is also significant value to the Administrator's customers in knowing whether or not their resources will receive credits, and thus the Committee intends that discretionary eligibility standards and calculation of actual credits will follow the general eligibility conditions for the mandatory credits. The exact size of the credit will give individual utilities ample incentive for local investments while preserving for other customers of the Administrator the rates and costs they would have paid in the absence of the individual utilities' action.

The amount of the credits is determined by different formulas set forth in the subsection. Conservation credits are to be set at the level at which the rate impact to the Administrator's other customers is the same as the rate impact such customers would have experienced if the Administrator had acquired resources in the same amount. Resource credits are to be based on the net costs actually incurred by the utility in acquiring the resource but the credit may not be greater than the cost of resource acquired by BPA from other resources.

Retail rate structures voluntarily implemented by a customer which induce conservation, or installation of consumer owned renewable resources will qualify for billing credits if they meet the same type of performance standards as are required from other conservation or resource activities under this subsection these rate forms are not limited to those studied by the Council pursuant to section 9(i)(1).

Before granting any credit, the Administrator must notify customers and the Council, explain the method he proposes to use in determining the amount of the credit, and permit them a reasonable time to express their views. All major resource credits must follow section 6(c).

Section 6(i) requires the Administrator to include in BPA contracts enforceable terms and conditions which will allow it to exercise effective oversight for all resources it acquires, including conservation activities for which it provides billing credits. Such terms and conditions may vary depending on the particular resource, and its potential impacts on BPA ratepayers.

This provision was strengthened significantly as a result of the Subcommittee's investigation of the net billed plants with the help of the GAO. The Committee expects that BPA will exercise responsibilities by BPA in such a way that cost overruns such as those experienced at the net billed plants will be minimized or avoided. It is intended that the BPA will have an active role in monitoring the

building and operation concerning such resources. To do this, BPA will have to expand its capability to oversee such activities.

Section 6(j) makes it explicit that the Act does not authorize any form of "Federal guarantee" for bonds sold to finance resources acquired by the Administrator. All contractual and other obligations required of the Administrator under the Act are secured solely by Bonneville's revenues. The full force and credit of the United States is not pledged. In addition, all offerings and promotional material for resources acquired by the Administrator under this Act must specifically state that the obligations are not guaranteed by the Federal government. The Committee will watch BPA's activities under section 6(i) and (j).

Section 6(k) requires that financial assistance, billing credits and other benefits be distributed equitably to each class of customer throughout the region.

Section 6(i) directs the Administrator to investigate opportunities for adding to the region's resources through the accelerated or cooperative development of renewable resources located outside the region and opportunities for mutually-beneficial interregional exchanges of power that reduce the need for additional generation or generating capacity in the Pacific Northwest and regions with which such exchanges may occur.

Paragraph (2) of subsection (1) authorizes and directs the Administrator periodically to investigate opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity, with emphasis upon reduction of additional generation in the Pacific Northwest and the regions with which such exchanges may occur. Similar exchanges implemented in the past have demonstrated the mutual benefits that regional exchanges can achieve. The Council is required to consider such investigations and interregional exchanges in formulating the regional conservation and electric power plan mandated by section 4.

Paragraph (3) authorizes the Administrator to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2).

Section 6(m) requires the Administrator to determine that a reasonable share of the resource to be acquired, or a reasonable equivalent, has been offered to each Pacific Northwest utility for ownership, participation, or other sponsorship. This provision is important because under section 5(e) each utility's entitlement will include those additional resources the utility has sold to the Administrator under section 6.

SECTION 7. *Rates*

Section 7(a) requires that the Administrator periodically review and set BPA rates to recover the Administrator's total costs, including amortization of the Federal investment in the Federal Columbia River Power System and specifies the applicable laws upon which FERC shall approve and confirm the Administrator's periodic rate filings, including the rates paid by BPA for purchased power. As recommended by FERC, these laws include the Flood Control Act of 1944. The costs include those incurred under section 4(h) of the Committee amendment, but they do not include, as recommended by FERC, an "allowance for contingencies".

Section 7(b) establishes the rates for power sold to meet the general requirements of public bodies, cooperatives, and Federal agency customers within the Pacific Northwest, and for sales under the 5(c) exchange. This rate will be the Administrator's lowest firm power rate. Section 7(b)(2) establishes a "rate ceiling" for preference customers that seeks to assure these customers that their rates will be no higher than they would have been had the Administrator not been required to participate in power sales or purchase transactions with non-preference customers under this Act. The assumption to be made by the Administrator in establishing this ceiling are specifically set forth. It is

through rate ceilings that this Act provides additional protection to public bodies and cooperatives' preference customers as to the price of the sale of power by the Administrator. In the event that this rate ceiling is triggered, then the additional needed revenues must be recovered from BPA's other rate schedules.

Section 7(c) prescribes the rates applicable to direct service industrial customers. Prior to July 1, 1985, the direct service industrial customer rates are set to recover the cost of resources required to serve such customers' loads, plus the otherwise unrecovered net costs of the section 5(c) exchange for the benefit of residential consumers in the region. After July 1, 1985, the rates are required to be equitable in relation to the retail rates charged by the Administrator's public body and cooperative customers to their industrial consumers in the region. Direct service industrial rates are to be adjusted to take into account the value of power system reserves available to Bonneville through its contract right to interrupt service to such customers.

Section 7(d) permits the Administrator to apply constraints to the rates of customers with low system densities. This is intended to afford greater equity to consumers of small rural co-ops which have high distribution costs due to difficult terrain, remote service areas, or other factors.

Section 7(e) clarifies that the Administrator may establish a uniform rate for the sale of peaking capacity and that the rate directives of this Act govern the amount of revenue the Administrator collects from each class of customers, not the rate form.

Section 7(f) establishes the rate or rates for sales to investor-owned utilities other than sales pursuant to the section 5(c) exchange, preference customers for power needed to meet the requirements of new large single "loads" and all other miscellaneous sales. This rate has sometimes been termed a new resource rate and does not preclude the

establishment of more than one rate under this provision if circumstances make a separate rate for a separate load or demand necessary or appropriate.

Section 7(g) accommodates the need to allocate across all rates those costs that cannot be allocated to particular rates to meet the requirement of section 7(a). BPA's obligation and that of the customers is to ensure that all costs are recovered. BPA also has an obligation to keep costs reasonable while carrying out its contractual and statutory obligations fully. This subsection further provides that all costs and benefits will be allocated to the various rates consistent with the provisions of this Act and, as appropriate, generally accepted ratemaking principles and specific directives of this Act.

Section 7(h) requires the Administrator to adjust rates if necessary in order to collect additional charges for failure to comply with standards established pursuant to section 4(f) and to allocate revenues from such surcharges in a way that will help achieve the purpose of section 4(f).

Section 7(i) establishes rather detailed procedures for ratemaking. The Committee amendment clarifies the procedures adopted by the Senate to ensure adequate and effective review of BPA rates and revisions thereof. It is the clear intent of the Committee that no one may use these procedures to frustrate the Act or to delay rate revisions. The BPA must act fairly to ensure full public and customer input, but dilatory tactics must be avoided. Few relish rate changes that result in higher rates, but often they cannot be avoided. The burden is on BPA to justify increases. These procedures should ferret out unjustified or inadequately supported changes.

This section also authorizes FERC to approve BPA's rates on an interim basis. FERC is authorized to establish procedures for this purpose, including provision for refunds if the final rate approved by FERC is less than the interim rate. FERC should act promptly to adopt such procedures.

Section 7(j) required the Administrator to provide information in rate schedules and billings to its customers on the cost of different resource categories and new resources. It allows the customer and, if included in the customer's bill to its ratepayers, the ratepayers of that customer to identify the costs of load growth.

Subsection (k) reaffirms that all rates or rate schedules proposed by the Administrator for the sale of non-firm energy outside of the region, but within the United States, shall become effective only after review by the Federal Energy Regulatory Commission for conformance with the requirements of existing law applicable to BPA sales: the Bonneville Project Act, the Flood Control Act of 1944 and the Federal Columbia River Transmission System Act. FERC's review will be based on the BPA record and on any subsequent FERC proceedings. In performing its review, the Commission shall afford any party to the BPA proceedings conducted under section 7(i) an opportunity for an additional hearing, to be conducted in accordance with procedures established by the Commission for ratemaking under the Federal Power Act. This section does not alter the authority of the Administrator under existing law, but supplements that authority. The second hearing requirement at FERC is intended to afford all parties fair opportunity to challenge BPA rates. However, it should not be allowed to become burdensome or dilatory.

To protect regional consumers from the economic penalties of selling low and buying high in dealings with Canada, section 7(l) permits the Administrator to negotiate or establish rates for sales outside the United States at levels which are equitable in view of the rates charged by non-U.S. entities to the Administrator or his customers. The BPA must give notice of proposed negotiations and notice of the rate agreed to as a result of such negotiations. The first notice, however, does not require BPA to reveal its negotiation strategy or its rate proposal.

SECTION 8. *Amendments to existing law*

Section 8(a) and (b) are technical amendments to the Transmission Act necessary on account of this Act.

Section 8(c) amends the Transmission Act in a more substantive way. It makes clear that the Administrator's ability to borrow does not include authority to borrow for the purpose of acquiring power from a major generating facility under section 6. This responds to the concerns of the Department of the Treasury and others relative to a Federal guarantee of the Administrator's acquisitions. Secondly, this section alters the terms on which the Administrator may borrow from Treasury. The Administrator is not permitted to borrow on the open market since BPA is required to borrow from Treasury. Treasury now charges the Administrator a rate equivalent to that of certain utility bonds sold on the open market. This bill specifies that the rate shall be the rate Treasury borrows plus a sufficient markup to raise the total rate to the level of similar bonds sold by other government agencies.

Lastly, this section raises the Administrator's borrowing limit of \$1.25 billion to \$2.5 billion effective in fiscal year 1982. The entire increase would be for a revolving fund for conservation and renewable resource loans and grants. It is subject to annual appropriations. It is intended that if such funds are funneled for this purpose through utilities to local customers, they shall be deemed to be the Administrator's funds.

Section 8 amends also Public Law 88-552 so that the definition of the term "Pacific Northwest" will coincide with that used in this Act.

SECTION 9. *Administrative powers*

Section 9(a), although apparently broad, is a technical provision that integrates the Administrator's authority under this Act with its authority under the Bonneville Project Act. Only insofar as it incorporates the authority necessary to carry out this Act does it expand existing BPA authority to contract. By allowing the same contracting

authority as exists under present law, this provision is intended to eliminate potential conflicts between the statutes in contract matters.

Section 9(b) specifies that the Administrator shall carry out his functions in accordance with the Act, the Bonneville Project Act and the Department of Energy Organization Act.

Section 9(c) insures that, as under present law, all power sold outside the Pacific Northwest by BPA must be surplus to the needs within the Northwest and that the provisions of the Act of August 31, 1964 will apply to resources acquired by BPA and its customers.

Paragraph (1) lists eight specific actions of the Council and BPA that are deemed final for purposes of judicial review under 5 U.S.C. 701-706.

Paragraph (2) sets forth the scope of review of such actions with or without a hearing. In the case of rate-making, the substantial evidence rule will apply. The adjudication provisions of 5 U.S.C. 554 and 557 do not apply to hearings under this bill.

Paragraph (3) makes it clear that other final actions and decisions of the Council and BPA are also subject to judicial review in accordance with existing law.

Paragraph (5) indicates what courts will entertain judicial review and provides some finality to the plan and other actions.

Section 9(e), the so-called "tax-exempt financing provision", preserves, but does not extend the ability of publicly-owned utilities to finance power resources with governmental obligations, the income from which is exempt from Federal taxation as provided in section 103(a)(1) of the Internal Revenue Code. So long as these resources are developed to meet the firm load of public bodies, cooperatives and Federal agencies, acquisition of these resources by the Administrator does not impair the exemption. The subsection establishes a two-step procedure to insure that

the exemption is only available for this purpose and is exercised consistent with appropriate regulations. First, the Administrator must certify that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this are public bodies, cooperatives and Federal agencies and this certification must be pursuant to methodology approved by the Secretary. Secondly, the Secretary must determine under regulations which apply to industrial development bonds that less than a major portion of the resource is to be furnished to persons who are not exempt persons (which term does not include cooperatives and Federal agencies).

Section 9(f) directs the Federal Energy Regulatory Commission to convene a joint State board to assist the Commission in its review of rates paid by the Administrator for power from investor-owned utilities. This insures that State regulatory bodies will be given an opportunity to participate in this review and does not establish any precedent in applying the Federal Power Act.

Currently, section 209 of the Federal Power Act authorizes such a board. This provision would mandate the board. However, it does not change FERC's remaining powers under section 209, including its power to revoke any reference to such a board.

Section 9(g) is intended to provide a limited exemption for the Public Utility Holding Company Act of 1935 by exempting from the definition of "electric utility company" in that Act any company which owns or operates facilities for the generation of electricity generated by such company to be sold directly or indirectly to the Administrator. At least ninety percent of such generation must be sold directly or indirectly to BPA. The Securities and Exchange Commission, with the concurrence of the Administrator, must determine that the organization of such company is consistent with the policies of section 1(b) of the Public Utility Holding Company Act of 1935 (PUHCA). Participation in any such facilities must be offered to public bodies and

cooperatives. The Administrator must include in contracts for the purchase of a major resource from that company provisions limiting the amount of equity, if any, in such company to that which the Administrator determines will be consistent with achieving the lowest attainable power cost. All significant contracts entered into by and between that company must be approved by BPA with the SEC's concurrence. These will include all sales, construction, financing and related contracts as a minimum. The exemption shall continue unless the Administrator or the Securities and Exchange Commission, or both through periodic review, determine that the company no longer operates in a manner consistent with the policy of the PUHCA. A procedure bringing the company into compliance is provided.

The Committee amendment requires the SEC to "determine that the organization is consistent with the policies of PUHCA" and contemplates that the SEC should establish procedures as it may deem appropriate to assure that such exemption is consistent with the policies of PUHCA. The amendment contemplates monitoring of the operation of the subsidiary. The SEC or the BPA Administrator may revoke the exemption upon a determination that it is no longer being operated in a manner consistent with the policies of PUHCA. The Committee amendment provides for periodic review by BPA and SEC of the exemption. The purpose of this provision is to ensure that the company is in compliance and, if it is not, to take appropriate action, including termination of the exemption. However, it is not intended that these agencies trigger termination procedure for minor or insignificant reasons. The agencies should give a company reasonable opportunity to make corrections after giving notice of them to the company. Also, the term "policies" of the 1935 Act is not defined by the Committee. The agencies are, obviously given some leeway to define them in light of the Act and its application today and in the future. The bill places a duty on both agencies. The Committee expects that it will be exercised properly and fairly, but with effect.

Lastly, in requiring that at least 90% of the power generated by the exempted company's share of a project be sold to BPA, the Committee understands that individual plant operations could cause an anticipated violation of this requirement and does not believe that an exemption should be lost under such circumstances, but the BPA and SEC should examine violations to see if they are, in fact, only minor in nature.

Section 9(h) describes the additional services that the Administrator is to provide his customers within the region. Paragraph (1) requires that the Administrator, upon the request of any customer, including the DSI's assist such customer in acquiring and disposing of non-Federal power that such customers need to replace power that may be curtailed or interrupted by the Administrator. Paragraph (2) authorizes the Administrator to prescribe policies and conditions for the independent acquisition or disposition of power by direct service industries. Paragraph (3) requires the Administrator to furnish services, including transmission, storage, and load factors, to customers unless he determines that the provisions of such services would interfere with his other responsibilities and provides a limited priority in this respect to resources under construction on the effective date of this Act is such power as has been offered for sale at cost and referred by the Administrator.

Section 9(i) requires the Council to prepare a report on retail rate structures that encourage cost-effective conservation and consumer-owned renewable resources, and to authorize the Administrator, upon request of a customer, to assist the customer in analyzing and developing retail structure that encourage such conservation and renewable resources.

Section 9(j) establishes a new position with BPA for conservation and renewable resources and requires that the Administrator, subject to his supervision, assign responsibility for conservation and renewable resource programs to

this person. The intent is to provide greater emphasis to these programs at BPA consistent with the bill's purposes.

SECTION 10. *Savings provision*

The Committee intends under section 10(a) that nothing in this Act shall be construed to modify the authorities and responsibilities of State and local governments and electric utilities over their traditional responsibilities for power matters, particularly siting of projects, rate regulations, safety and other areas within State jurisdiction. The disclaimer, however, does not relieve BPA customers and others with contractual obligations under this bill from complying with those obligations and this bill.

Section 10(b) preserves the rights and obligations of the Administrator and his customers under contracts existing on the effective date of this Act. Again this provision must be read in light of other provisions of the bill that provide for termination of contracts upon acceptance of initial contracts.

Section 10(c) makes it clear that this Act does not in any way affect or modify the preference provisions contained in other Federal power marketing statutes.

Section 10(d) was added by the Committee to insure that certain identified contracts entered into by the Administrator to sell power, to acquire or credit resources, or to reimburse investigation and preconstruction expenses, shall not be affected if any provision of this Act is found to be unconstitutional. The savings provision applies to contracts entered into prior to such finding and in accordance with the affected provision.

Section 10(e) was added by the Committee to insure that nothing in this Act shall be construed to modify any treaty or other right of an Indian tribe.

SECTION 11. *Effective date*

This section establishes the effective date of the bill to be the enactment date or October 1, 1980, whichever is later.

Appendix E

96TH CONGRESS HOUSE OF REPRESENTATIVES REPT. 96-976
2d Session Part II

Assisting the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes

SEPTEMBER 16, 1980. — Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL,
SEPARATE, and DISSENTING VIEWS

[To accompany S. 885]

[Including the cost estimate of the Congressional
Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 885) to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of re-

newable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act".

TABLE OF CONTENTS

- Section 1. Short title and table of contents.
- Section 2. Purposes.
- Section 3. Definitions.
- Section 4. Regional planning and participation.
- Section 5. Sale of power.
- Section 6. Conservation and resource acquisition.
- Section 7. Rates.
- Section 8. Amendments to existing law.
- Section 9. Administrative provisions.
- Section 10. Savings provision.
- Section 11. Effective Date.

PURPOSES

SECTION 2. The purposes of this Act, all of which are to be consistent with applicable provisions of environmental and other laws, are —

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System, conservation and efficiency in the use of electric power and the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments,

consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in the development of regional plans and programs related to energy conservation, renewable resources, other resources, and in achieving the purposes of this Act to facilitate the orderly planning of the region's power system, to provide environmental quality, and to protect, mitigate, and enhance the fish and wildlife resources;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act —

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate, and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant im-

portance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other facilities on the Columbia River and its tributaries.

DEFINITIONS

SECTION 3. As used in this Act, the term —

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast —

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including,

if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, decommissioning costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) "Consumer" means any end user of electric power.

(6) "Council" means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established by this Act.

(7) "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this Act.

(8) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) "Electric power" mean electric peaking capacity, or electric energy, or both.

(10) "Federal base system resources" means —

(A) the Federal Columbia River Power System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on the effective date of this Act; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B).

(11) "Indian tribe" means any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior.

(12) "Major resource" means any resource that—

(A) has a planned capability greater than fifty average megawatts, and

(B) if acquired by the Administrator, is acquired for a period of more than five years but does not mean any resource acquired pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act.

(13) "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer, as applicable prior to September 1, 1979, and

(B) which will result in an increase in power requirements of ten average megawatts or more in any consecutive twelve-month period.

(14) "Pacific Northwest", "region", or "regional" means—

(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

(15) "Plan" means the Regional Electric Power and Conservation plan adopted pursuant to this Act and such plan shall apply to actions of the Administrator as specified in this Act.

(16) "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(17) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator —

(A) from resources, or

(B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.

(18) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electric loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(19) "Resource" means—

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(20) "Secretary" means the Secretary of Energy.

REGIONAL PLANNING AND PARTICIPATION

SECTION 4. (a)(1) To facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and the United States pursuant to this Act, there is established the Pacific Northwest Electric Power and Conservation Planning Council, which shall have its offices in the Pacific Northwest. The Council shall be composed of eight members, and shall be considered formed when at least six members have been appointed.

(2) The Governors of Idaho, Montana, Oregon, and Washington may appoint, subject to applicable State law, two members from their respective States to carry out the functions of Council members set forth in this Act. The applicable State authorities and appointing actions of the States shall constitute an agreement to the exercise by the Council of the functions set forth in this Act, to which the Congress hereby consents.

(3) Members of the Council appointed pursuant to section 4(a)(2) shall—

(A) serve until June 30 of the third twelve-month period following the date of their appointment, unless otherwise provided by State law;

(B) be subject to removal in accordance with the provisions of State law;

(C) be compensated according to such State law from funds available pursuant to paragraph (14); and

(D) be deemed to be officers or employees of their respective States, and not of the United States.

(4)(A) If the Governors have not appointed at least six Council members by April 30, 1981, or if, for any other reason the Council set forth in paragraph (2) is unable to be formed or is held by a United States court of appeals to be unable to perform substantially all of its functions, the Secretary shall temporarily appoint two members from each of the States of Washington, Oregon, Idaho, and Montana to serve on an interim basis until such time as Congress or the States act to cure any impediment to the appointment of Council members pursuant to paragraph (2). Any appointments by the Secretary under this paragraph shall be made in a manner designed to assure continuity of the Council's functions and to minimize any possible disruption of the Council's activities during such interim period. Unless extended by the Congress, the interim Council appointed pursuant to this paragraph shall terminate at the end of the second full Congress following the first temporary appointment.

(B) Within one year after making any such temporary appointment pursuant to this paragraph, the Secretary, in consultation with the Governors of the Pacific Northwest States, shall formally submit to the appropriate committees of Congress recommended legislation that will permit members to be appointed by the Governors in the manner set forth in paragraph (2). The Secretary shall make quarterly reports to the Governors on the progress of such legislation until its enactment and to Congress as to whether the

interim Council should be extended or any other recommendations for legislation or other action which the Secretary recommends should be taken, following termination of the Council, to continue carrying out the purposes for which the Council was established.

(C) If members are appointed by the Secretary on an interim basis pursuant to this paragraph, they shall (i) receive compensation under the General Schedule at a rate equivalent to the salary of members appointed from the same State by the Governor pursuant to paragraph (2); (ii) be considered during their temporary appointments, officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.); and (iii) be allowed travel expenses, including per diem in lieu of subsistence expenses, in addition to the compensation provided in this paragraph.

(D) In the event the Congress fails to extend the interim Council or enact legislation to cure any impediment to the appointment of Council members pursuant to paragraph (2), the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits or services involving a major generating resource until the expenditure of funds for that purpose has been specifically approved by Act of Congress.

(5) A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this Act, all actions and decisions of the Council shall be by majority vote of the voting members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of (A) a majority of the members appointed to the Council, including the vote of at least one member from each State; or (B) at least six members of the Council.

(6) The members of the Council shall select from among themselves a Chairman for the Council. The Council shall

meet at the call of the Chairman or upon the request of a majority of the members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.

(7) The Council shall appoint, and may assign and delegate duties to such executive and administrative personnel as the Council deems necessary to fulfill its functions under this Act, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this Act. No person appointed by the Council shall be deemed to be an employee of the United States.

(8) Upon request of the Council, the head of any Federal agency is authorized to detail to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this Act.

(9) To obtain such information and advice as the Council determines to be necessary or appropriate to carry out the purposes of this Act, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.

(10) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions under this Act. The Council shall make available to the public a statement of its organization, practices, and procedures, and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.

(11) The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall fur-

nish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

12(A) At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this Act and as the Council determines are necessary or appropriate for the performance of its functions including financial support to those States which have appointed members to the Council pursuant to section 4(a)(2) for their participation in the Council and activities of the State related thereto. Funds for such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d). Such funds shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

(B) Notwithstanding the limitation contained in the third sentence of subparagraph (A), upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions under this Act, the Administrator may raise such limit up to any amount not in excess of 0.10 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year.

(b)(1) The Council shall, subject to applicable law, establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is

relevant to the Council's development and amendment of a regional conservation and electric power plan.

(2) The Council may, subject to applicable law, establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions under this Act.

(c) The Council shall ensure that the membership of any advisory committee established or formed pursuant to subsection (b) of this section shall, to the greatest extent feasible, be composed of representatives of, and seek the advice of, the various Federal, State, and Indian Tribal Governments, consumer groups, and customers whose interests are or may be directly or indirectly substantially affected by the recommendations of such advisory committees.

(d) Within two years after the effective date of this Act, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, non-technical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, United States Code and such procedures as the Council shall adopt.

(e)(1) The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost effective. Priority shall be given; first, to con-

servation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

(2) The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 of this Act to reduce or meet the Administrator's obligations with due consideration by the Council of (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

(3) To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

(A) an energy conservation program to be implemented under this Act including, but not limited to, model conservation standards;

(B) recommendations for research and development;

(C) a methodology for determining quantifiable environmental costs and benefits under section 3(4);

(D) a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of

the priority categories referred to in paragraph (1) which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect of the requirements of subsection (h) on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and the types of resources from which such power should be acquired;

(E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;

(F) the program adopted pursuant to subsection (h); and

(G) if the Council recommends surcharges pursuant to subsection (f), a methodology for calculating such surcharges.

(4) The Council shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall include in such study and analysis estimates of financial assistance to the extent such assistance might be necessary for particular conservation measures to be implemented.

(f)(1) Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and

climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers through financial assistance made available to consumers under section 6(a) of this Act. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

(2) The Council by a majority vote of the members of the Council is authorized to recommend to the Administrator a surcharge and the Administrator shall thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures applicable to such customers that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

(g) To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall —

(1) take into account, and give due consideration to, the results of the voting in any election bearing on those policies held in those States, or subdivisions thereof, which comprise the region, as defined in section 3(14), and

(2) maintain comprehensive programs to —

(A) inform the Pacific Northwest public of major regional power issues,

(B) obtain public views concerning major regional power issues, and

(C) secure advice and consultation from the Administrator's customers and others.

(h)(1)(A) The Council shall develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including habitat, on the Columbia River and its tributaries. Because of the unique history problems and opportunities presented by the development and operation of the hydroelectric facilities on the Columbia River and its tributaries, the program shall be designed to deal with that river and its tributaries as a system. As a result, this subsection shall be applicable solely to fish and wildlife, including habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify or affect in any way the laws applicable to other rivers, river systems, or electric power facilities, or affect the rights and obligations of any agency, entity, or person under such laws.

(B) The Council shall request in writing promptly after the effective date of this Act and prior to the development or review of the plan, or any major revision thereto, from the Federal and the region's State fish and wildlife agencies and the region's appropriate Indian tribes, recommendations for —

(i) measures which the Administrator, using authorities under this Act and other laws and other Federal agencies can implement to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries;

(ii) objectives for the development and operation of projects of the Columbia River and its tributaries in

a manner designed to protect, mitigate, and enhance fish and wildlife, and

(iii) fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation and enhancement of anadromous fish at and between the region's hydroelectric dams.

(C)(i) Agencies and tribes shall have ninety days to respond to such request, unless the Council extends the time for making such recommendations. The Federal and the region's water management agencies, and the region's electric power producing agencies, customers and public may submit recommendations of the type referred to in subparagraph (1)(B), and comments on the recommendations submitted by agencies and tribes, within such reasonable time as the Council shall provide. All recommendations shall be accompanied by detailed information and data in support of the recommendations.

(ii) The Council shall give notice of all recommendations and shall make recommendations and supporting documents available to the Administrator, to the Federal and the region's State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Upon request, notice shall also be given to members of the public, and copies of recommendations and supporting documents shall be made available at reasonable cost. The Council shall provide opportunities for public participation and comment regarding the recommendations and supporting documents by conducting hearings or by other appropriate means.

(iii) Thereafter, the Council shall develop a program on the basis of recommendations, supporting documents, and relevant additional views and information. The program shall consist of measures to protect, mitigate and enhance

fish and wildlife affected by the development or operation of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent they satisfy the criteria of this subsection and are designed to achieve protection and mitigation.

(iv) Measures included in the program shall —

(1) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;

(2) be based on and supported by the best available scientific knowledge;

(3) achieve sound biological objectives at minimum economic cost for each objective;

(4) be consistent with the legal rights of appropriate Indian tribes in the region;

and, in the case of anadromous fish;

(5) provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and

(6) provide flows of sufficient quality and quantity between such facilities to improve production, mitigation and survival of such fish as necessary to meet sound biological objectives.

(v) The Council shall determine whether each recommendation received is consistent with the purposes of this Act. In the event such recommendations are inconsistent with each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes. If the Council does not adopt any recommendation as part of the program, it shall explain in writ-

ing, as part of the program, the basis for its finding that the adoption of such recommendation would be —

(1) inconsistent with the purposes of the Act;

(2) inconsistent with the standards for the program established in this paragraph; or

(3) less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.

(vi) The Council shall recognize, in developing and adopting a program pursuant to this subsection, the following additional principles:

(1) enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and operation of the hydroelectric facilities of the Columbia River and its tributaries as a system,

(2) consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only,

(3) monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the Administrator consistent with individual project impacts and system-wide objectives pursuant to paragraph (2) of this subsection, and

(4) to the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures and measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the

appropriate parties providing for the administration and funding of such additional measures.

(vii) The Council shall adopt such program within one year of the time provided for receipt of the recommendations in section 4(h)(1)(B). Such program shall also be included in the plan adopted by the Council under subsection (d). The Council's actions pursuant to this paragraph shall be subject to judicial review under the provisions of section 9(e).

(2)(A) The Administrator shall use the Bonneville Power Administration fund and appropriations, if any, and the authorities available to the Administrator under this Act and other laws administered by the Administrator, to protect, mitigate, and enhance the fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, the program adopted by the Council under section 4(h)(1), the purposes of this Act, and the provisions of other laws. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(B) The Administrator may make expenditures from such fund for such purposes which shall have been included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than five years or an aggregate capital cost of over \$1 million shall be funded as provided in the appropriation Acts from the proceeds of bonds issued by the Administrator pursuant to section 13 of the Federal Columbia River Transmission System Act or from appropriations, including appropriations to other Federal agencies for such purposes.

(C) The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be further allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.

(3)(A) The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall —

(i) exercise such responsibilities in coordination with one another, consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated under other provisions of law;

(ii) exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under paragraph (1).

If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with paragraph (2) of this subsection.

(B) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Assistant

Administrator for the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes and affected project operators in carrying out the provisions of this paragraph.

(4) Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Interstate and Foreign Commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this section including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof. The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this Act, including this subsection.

(5) If, after one year from the effective date of this Act, the Council is unable to be formed or to perform its functions under the provisions of this subsection, the Administrator shall, upon request of the region's State and Federal fish and wildlife agencies or appropriate Indian tribes, carry out the development of a program in accordance with the provisions of this subsection, until such time as the Council is formed or the Administrator determines it is able to perform its functions.

(i) In carrying out the provisions of this section, the Council and the Administrator shall—

- (1) consult with the Administrator's customers;
- (2) include the comments of such customers in the record of the Council's proceedings; and

(3) recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

(j) In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (1) investigate possible measures to be included in the plan, (2) provide public involvement and information regarding a proposed plan or amendment thereto, and (3) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council may be incorporated as part of the plan.

SALE OF POWER

SECTION 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof.

Such sales shall be at rates established pursuant to section 7.

(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A) the capability of such entity's firm peaking and energy resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2) Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this Act, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

(6) Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall —

(A) provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

(B) not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

(C) contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of the effective date of this Act, to be used to serve its own firm loads.

The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm

resources determined by such customer under paragraph (1) to be used to serve its firm load.

(c)(1) Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

(2) The purchase and exchange sale referred to in paragraph (1) with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

(3) The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

(4) An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

(5) Subject to the provisions of sections 4 and 6, in lieu of purchasing any amount of electric power offered by a

utility under paragraph (1), the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

(6) Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

(7) The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include —

(A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;

(B) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and

(C) any costs of any generating facility which is terminated prior to initial commercial operation.

(d)(1)(A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

(B) After the effective date of this Act, the Administrator shall offer in accordance with subsection (g) to each existing direct service industrial customer an initial long-term contract that provides such customer an amount of power equivalent to that to which such customer is entitled

under its contract dated January or April 1975 providing for the sale of "industrial firm power".

(2) The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines that such proposed sale is consistent with the plan and that —

(A) additional power system reserves are required for the region's firm loads,

(B) the proposed sale would provide a cost-effective method of supplying such reserves,

(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and

(D) the Administrator has or can acquire sufficient electric power to serve such loads, and

unless the Council has approved such sale by majority vote. After such determination and approval, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

(4)(A) As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on the effective date of this Act and which has before such effective date received electric power from the Administrator pursuant to such contract.

(B) The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

(e)(1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

- (A) public bodies and cooperatives;
- (B) Federal agencies;
- (C) direct service industrial; and
- (D) investor-owned utilities.

(2) Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 6 shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 6 shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

(3) The Administrator shall, consistent with the provisions of this Act, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) are distributed equitably throughout the region.

(f) The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsection (b), (c) and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).

(g)(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to —

(A) existing public body and cooperative customers and investor-owned utility customers under subsection (b);

(B) Federal agency customers under subsection (b);

(C) electric utility customers under subsection (c); and

(D) direct service industrial customers under subsection (d)(1).

(2) Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

(3) An initial contract with a public body, cooperative, or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

(4) An initial contract with an electric utility customer pursuant to subsection (c) shall be effective on the date

executed by such customer, but no earlier than the first day of the tenth month after the effective date of this Act.

(5) An initial contract with a direct service industrial customer pursuant to subsection (d)(1) shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after the effective date of this Act. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

(6) Initial contracts offered public body, cooperative, and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

(7) The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1)(A) through (D).

CONSERVATION AND RESOURCE ACQUISITION

SECTION 6. (a) The Administrator shall acquire such resources, through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) and, in the case of major resources, in accordance with subsection (c). Such conservation measures and such resources may include, but are not limited to —

(1) loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

(2) technical and financial assistance to, and other cooperation with, the Administrator's customers and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of any cost-effective conservation objectives adopted by individual States or subdivisions thereof,

(3) aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 4(f), and

(4) conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

(b)(1) In addition to electric power acquired under subsection 5(c) or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), the Administrator, without considering restrictions which may apply pursuant to subsection 5(b), shall meet his contractual obligations to protect, mitigate and enhance fish and wildlife under section 4(h)(2) that remain after taking into account planned savings from measures provided for in subsection (a) by acquiring sufficient resources.

(2) Except as specifically provided in this section, acquisition of resources under this Act shall be consistent with the plan or, if no plan is in effect, consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) both as determined by the Administrator, and, in the case of major resources, in accordance with subsection (c).

(3) The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions that will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner con-

sistent with the factors specified in section 4(e)(2) of this Act.

(4) Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to acquire and implement conservation and acquire renewable resources pursuant to subsection (a).

(5) In making any payment to an investor-owned utility for the acquisition under this subsection of any resource as defined by section 3(19)(A), or for the exchange of power under section 5(c), the Administrator shall exclude the costs of construction work in progress.

(c)(1) For each proposal under subsection (a), (b), (f), (h), or (l) to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall —

(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other mate-

rials and information as may have been submitted to, or developed by, the Administrator, and

(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m), as appropriate —

(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

In the case of subsection (f), such decision shall be treated as satisfying the requirements of this subsection, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

(2) Within sixty days after receipt of the Administrator's decision pursuant to paragraph (1)(D), the Council may determine by a majority vote of all members of the Council, and notify the Administrator, that the proposal is either consistent or inconsistent with the plan, or, if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2): Provided, That the Council's authority to make consistency determinations if no plan is in effect shall cease upon the adoption of a plan or the

expiration of two years from the effective date of this Act, whichever is earlier.

(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) unless (A) the Administrator determines that the resource is needed to meet the Administrator's contractual obligations under section 5 without considering restrictions which may apply pursuant to section 5(b), and (B) the expenditure of funds for that purpose has been specifically authorized by legislation enacted by the Congress pursuant to bills reported from the committees of Congress having jurisdiction, under the applicable rules of the respective Houses of Congress, over substantive amendments to the Federal Columbia River Transmission System Act and the Bonneville Project Act.

(4) Before the Administrator implements any proposal referred to in paragraph (1), the Administrator shall —

(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969,

(B) publish notice of the decision in the Federal Register, and

(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

The Administrator may not implement any such proposal until ninety days after the date of publication in the Federal Register.

(d) The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 4(e)(1) and the considerations of section 4(e)(2) but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(e)(1) In order to effectuate the priority given to conservation measures and renewable resources under this Act, the Administrator shall, to the maximum extent practicable, make use of his authorities under this Act to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f)).

(2) To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

(f)(1) For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of —

(A) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

(B) any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

In the case of any resource referred to in subparagraph (B), such reimbursement is authorized only if —

(i) such resource is subsequently denied State siting approval or other necessary Federal or State permits, or approvals,

(ii) such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or is not acceptable because of environmental impacts, or

(iii) after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

(2) The Administrator may exercise the authority of this subsection only if he does not foresee termination of the resource. If the Administrator reasonably foresees that certain actions of the resource sponsors may lead to termination of the resource, he shall specify such actions with particularity in the agreement and shall exclude reimbursement if the resource sponsors take such actions. In no event shall the Administrator agree to reimburse expenses incurred prior to the effective date of this Act or of the agreement.

(3) Any agreement under paragraph (1) shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

(4) The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State siting approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(g) At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h)(1) If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for —

(A) conservation activities independently undertaken or continued after the effective date of this Act by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this Act, or

(B) resources constructed, completed, or acquired after the effective date of this Act by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this Act. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(2) The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

(3) The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

(4) For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

(5) Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

(6) Prior to executing a contract for any billing credit or related services pursuant to this subsection, the Administrator shall —

(A) Comply with the notice and hearing provisions of subsection (c), and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;

(B) Include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838(j));

(C) Include in such contract provisions to ensure that resources in excess of a customer's reasonable load growth shall have been offered to others for ownership, participation or other sponsorship pursuant to subsection (m), except in the case of conservation, multipurpose projects uniquely suitable for development by the customer, or renewable resources; and

(D) Include in such contract provisions to ensure that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.

(i) Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will —

(1) insure timely construction, scheduling, completion, and operation of resources,

(2) insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices and (B) the protection, mitigation, and enhancement of fish and wildlife, including related spawning grounds and

habitat, affected by the development of such resources, and

(3) insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation, including environmental protection.

Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs of and proposals for, major modifications in construction, scheduling, or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

(j)(1) All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

(2) All contracts entered into by the Administrator for the acquisition of resources pursuant to this Act shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1). The Administrator shall monitor and enforce such requirement.

(k) In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

(1)(1) The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.

(2) The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may occur. The Council shall take into consideration in formulating a plan such investigations.

(3) After the Administrator submits a report to Congress pursuant to paragraph (5), the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2). Such acquisitions shall be in accordance with the provisions of this section.

(4) The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

(5) No later than July 1, 1981, the Administrator shall submit to the Congress a report of the result of the investigations undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.

(m) Except as to resources under construction on the effective date of this Act, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's regional load.

(n) The Council may authorize the Administrator to implement a proposal not subject to the provisions of section 6(c)(1) upon satisfaction of the requirements of section 6(c)(4) notwithstanding a finding by the Administrator that such proposal is inconsistent with the plan, or, if no plan is in effect, inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(o) The Council or any customer of the Administrator may request the Administrator to take action under section 6 to carry out his responsibilities under this section. Within 60 days of the receipt of such request, the Administrator shall respond in writing either that he will propose the action and will initiate the procedures of this section in order to review the action, or that he will not propose the action and the reasons why such action would not be timely or would not be consistent with the plan or with the Administrator's obligations under this Act or other provisions of law which the Administrator shall specifically identify.

RATES

SECTION 7. (a)(1) The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System

(including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

(2) Rates established under this section shall become effective only upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

(A) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs;

(B) are based upon the Administrator's total system costs, and

(C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal utilizing such system.

(b)(1) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources.

(2) After July 1, 1985, the projected amounts to be charged for firm power for the combined general require-

ments of public body, cooperative, and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources, and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that—

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

(i) served by the Administrator, and

(ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A);

(C) no purchases or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B)) were—

(i) purchased from such customers by the Administrator pursuant to section 6, or

(ii) not committed to load pursuant to section 5(b),

and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative, and Federal agency customers resulting from—

(i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D), and

(ii) reserve benefits as a result of the Administrator's actions under this Act

were not achieved.

(3) Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by —

(A) a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1), and

(B) an overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

(4) The term "general requirements" as used in this section means the public body, cooperative, or Federal agency customer's electric power purchased from the Administrator under section 5(b), exclusive of any new large single load.

(c)(1) The rate or rates applicable to direct service industrial customers shall be established —

(A) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(c), based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

(B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

(2) The determination under paragraph (1)(B) shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account —

(A) the comparative size and character of the loads served,

(B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

(C) direct and indirect overhead costs,

all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

(3) The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

(d)(1) In order to avoid adverse impacts on retail rates of the Administrator's customers with low-system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

(2) In order to avoid adverse impacts on direct service industrial customers using raw materials indigenous to the region as their primary resource, the Administrator is authorized to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region.

(e) Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

(f) Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c), and additional resources which, in the determination of the Administrator, are applicable to such sales.

(g) Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on the

effective date of this Act, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this Act, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) Notwithstanding any other provision of this section (except the provisions of subsection (a)), the Administrator shall adjust power rates to include any surcharges arising under section 4(f), and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 4(f).

(i) In establishing rates under this section, the Administrator shall use the following procedures:

(1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2).

(2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written or oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing —

(A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

(B) the hearing officer shall allow for cross-examination to develop information and material relevant to any such proposed rate.

(3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before, the close of hearings shall be made a part of the administrative record.

(4) After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

(5) The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

(6) The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2). The Commission shall have the authority, in accordance with such procedures as the Commission may establish, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection: *Provided, That*, until the Commission has established appropriate procedures for interim approval, the Secretary shall have authority to approve on an interim basis final rates submitted by the Administrator.

(j) All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate —

(1) the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

(2) the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

(k) Notwithstanding any other provision of this Act, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after the date of this Act by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Notwithstanding section 201(f) of the Federal Power Act, such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) and this subsection. The parties to such proceedings under subsection (i) shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(1) In order to further the purposes of this Act and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than the rates

established under this Act for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

AMENDMENTS TO EXISTING LAW

SECTION 8. (a) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 837) is amended by striking out the semicolon at the end of paragraph (6) and inserting in lieu thereof “, or (iv) on a short term basis to meet the Administrator’s obligations under section 4(h)(2) of the Pacific Northwest Electric Power Planning and Conservation Act;”.

(b) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838) is amended by striking out “and” at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof “; and”, and by adding at the end thereof the following new paragraph:

“(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act.”.

(c) Subsection (b) of section 13 of such Act is amended by striking out “and 11(b)(11)” and inserting in lieu thereof “, 11(b)(11), and 11(b)(12)”.

(d)(1) The first sentence of subsection (a) of section 13 of such Act is amended by inserting “(1)” after “is authorized”, by inserting after the word “system,” the following: “and to implement the Administrator’s authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric

power from any generating facility not utilizing a renewable resource or from a generating facility utilizing a renewable resource and having a planned capability greater than fifty average megawatts),", and by inserting "(2)" before "to issue and sell bonds to refund such bonds".

(2) The fourth sentence of such subsection (a) is amended by inserting the following before the period at the end thereof: "issued by Government corporations. Based on information provided by the Administrator to the Secretary of the Treasury, the interest rate determined pursuant to the immediately preceding sentence will be increased by 1 per centum thereof for each immediately preceding consecutive fiscal year, beginning with the fiscal year in which this Act becomes effective, that the applicable financial reports, including current repayment studies, of the Administrator show repayment criteria not being met".

(3) Such subsection (a) is further amended by inserting the following before the period at the end thereof: "prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional \$1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds".

(e) Clause (2) of section 1(b) of the Act of August 31, 1964 (78 Stat. 756) is amended to read as follows: "(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region."

(f) Section 7 of the Federal Columbia River Transmission System Act is amended by inserting "(a)" after "7" and by adding the following new subsection at the end thereof:

"(b)(1) From amounts available to the Administrator from the fund under section 11(b)(2), the Administrator shall make annual impact aid payments to State and local governments having within their jurisdiction the transmission facilities described in paragraph (2). The Administrator may also make impact aid payments to State and local governments with respect to transmission facilities of the Administrator other than those described in paragraph (2) where the construction of such facilities, or any substantial modification thereof, is completed after the date of enactment of the Pacific Northwest Electric Power Planning and Conservation Act and the Administrator determines that such facilities have a substantial impact on the State and local government concerned.

"(2) The transmission facilities for which payments shall be made under this subsection are any major transmission facilities —

"(A) which are owned by the Bonneville Power Administration;

"(B) which are exempt from State and local real property taxes; and

"(C) initial construction of which was completed after the date of the enactment of the Pacific Northwest Electric Power Planning and Conservation Act.

"(3)(A) The payments made under this subsection for any year shall be determined on the basis of a regionwide formula established by the Administrator by rule, after notice and opportunity for public hearing and after consultation with State and local governments in the region and the Administrator's customers in the region. Such formula shall provide for an annual payment based on (i) the

amount of land and interests in land acquired by the Administrator for purposes of constructing the facility, and the value of the facilities constructed thereon, and (ii) the costs of all governmental services related to the facility and an appropriate share of the general government expenses which are ordinarily paid from State and local real property taxes. No annual payment to any such State or local government may exceed such amount as the Administrator determines would be paid to such government during that year if the transmission facilities were not exempt from State and local real property taxation."

ADMINISTRATIVE PROVISIONS

SECTION 9. (a) Subject to the provisions of this Act and the Bonneville Project Act, the Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)).

(b) The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), sections 302(a) (2) and (3) of the Department of Energy Organization Act, and this Act. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this Act in a sound and businesslike manner.

(c) Any contract of the Administrator for the sale or exchange of electric power for outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no

market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this Act. The Administrator shall, in making any determination, under any contract executed pursuant to section 5, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

(d) No restrictions contained in subsection (c) shall limit or interfere with the sale, exchange, or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange, or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. The Administrator, in addition to the directives contained in subsections (i)(1)(B) and (i)(3), and subject to any contractual obligations of the Administrator, or any

other obligations under existing law, shall (1) provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and (2) shall not discriminate on the basis of independent development of resources against any utility or group thereof in providing such services.

(e)(1) For purposes of sections 701 through 706 of title 5, United States Code, the following actions shall be final actions subject to judicial review —

(A) adoption of the plan or amendments thereto by the Council under section 4, and adoption of the program by the Council under section 4(h) ;

(B) sales, exchanges, and purchases of electric power under section 5 ;

(C) the Administrator's acquisition of resources under section 6 ;

(D) implementation of conservation measures under section 6 ;

(E) execution of contracts for assistance to sponsors under section 6(f) ;

(F) granting of credits under section 6(h) ; and

(G) establishment of a regionwide formula under section 7(b)(3) of the Federal Columbia River Transmission System Act.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this Act. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, United States Code. The scope of review of an action under section 6(c) shall be governed by section 706 of title 5, United States Code. Nothing in this section shall be construed to require a hearing pursuant to section 554 or 557 of title 5 of the United States Code.

(3) Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

(4) For purposes of this subsection —

(A) major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 6(c)(4)(B) ;

(B) resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

(C) conservation measures shall be deemed to be implemented upon execution of the contract or grant therefor; and

(D) rate determinations pursuant to section 7 shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

(5) Suits to challenge final actions and decisions taken pursuant to this Act, or the implementation of such final actions, whether brought pursuant to this Act, the Bonneville Project Act, the Act of August 31, 1964 (16 U.S.C. 837-837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the appropriate Federal court in the case of rates under section 7 and in the United States court of appeals for the region in the case of other actions or decisions subject to the provisions of this subsection. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this Act to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such courts shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan, as finally adopted or

portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this Act or any other law administered by the Administrator.

(f) For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provide in section 103(a)(1) of the Internal Revenue Code of 1954 shall not be affected by the Administrator's acquisition of such resources if —

(1) the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this Act are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of such Code), and

(2) based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of such Code).

The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

(g) When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under section 5(c) or 6, the Federal Energy Regulatory Commis-

sion shall, in accordance with section 209 of the Federal Power Act (16 U.S.C. 824h) —

(1) convene a joint State board, and

(2) invest such board with such duties and authority as will assist the Commission in its review of such rates.

(h)(1) No "company" (as defined in section 2(a)(2) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(2)), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(3)), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code, if at least 90 per centum of the electricity generated by such company is sold to the Administrator under section 6, and if —

(A) the organization of such company is consistent with the policies of the Public Utility Holding Company Act of 1935, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

(B) participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 6(m).

(2) The Administrator shall include in any contract for the acquisition of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

(3) In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all signifi-

cant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policy of the Public Utility Holding Company Act of 1935 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

(4) Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determines at any time that the "company" no longer operates in a manner consistent with the policy of the Public Utility Holding Company Act of 1935 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

(i)(1) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable —

(A) acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 5(b), or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the

direct service industrial customers requesting such power; and

(B) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable laws.

(2) In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition of disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

(3) The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations, or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year.

(j)(1) The Council, as soon as practicable after the enactment of this Act, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient use of

electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

(2) Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 6(h) that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

(k) There is hereby established within the administration an Assistant Administrator position for conservation and renewable resources. Such Assistant Administrator shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.

SAVINGS PROVISIONS

SECTION 10. (a) Nothing in this Act shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to —

(1) determine retail electric rates, except as provided by section 5(c)(3);

(2) develop and implement plans and programs for the conservation, development, and use of resources; or

(3) make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) Nothing in this Act shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of the effective date of this Act.

(c) Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

(d) If any provision of this Act is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 5, and section 6 (a), (b), (f), or (h) of this Act shall not be affected by such finding.

(e) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(f)(1) Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual.

(2) In the implementation of this Act, the United States, its agents, permittees, or licensees shall not appropriate, use, divert, dedicate, or claim water within any State unless such appropriation, use, diversion, dedication, or claim takes place pursuant to substantive and procedural provisions of State law, regulation, or rule of law, including the establishment, exercise or enforcement of terms or con-

ditions, governing appropriation, use, diversion, or dedication of water.

(3) Nothing in this Act shall alter in any way any provision of State law, regulation, or rule of law or of any interstate compact governing the appropriation, use, diversion, dedication of, or claim to, water.

(4) Nothing in this Act shall be construed as altering or affecting the rights of any Indian tribe.

(g) Nothing in this Act shall obligate the Federal Government for the performance of any new contracts executed by the Administrator or Council directly or indirectly unless specifically authorized by Congress.

(h) The reservation under law of electric power for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State, plus 50 per centum of any electric power produced at Libby Reregulating Dam if built, is hereby affirmed. Electric power so reserved shall be sold at the rate or rates set pursuant to section 7.

EFFECTIVE DATE

SECTION 11. This Act shall be effective on the date of enactment, or October 1, 1980, whichever is later. The term "date of enactment of this Act" as used in this Act shall be either such date or October 1, 1980.

PURPOSE

One of the primary purposes of S. 885¹ is to allow the Pacific Northwest to resolve the competing claims to the Federal energy resources of the region and enable it to focus its attention on the task of developing an economical, adequate, efficient and reliable power system for the future.

¹S. 885 was approved by the Senate on August 3, 1979. Comparable, though not identical, measures referred to the Committee

Additional purposes include: the implementation and development of conservation and renewable energy programs; the establishment of a regional public planning process to enable all regional entities and the public at large to participate in the region's electrical energy decision making process; the protection, mitigation and enhancement of the fish and wildlife resources of the Columbia River and its tributaries; and the preservation of the authorities and responsibilities of non-Federal entities in the electrical energy field. It is not, however, a purpose of this legislation to interfere in any way with, or modify, the statutory rights of preference customers either within or without the region; nor is this legislation intended to be a precedent for any other region of the country.

BACKGROUND AND NEED

Formed in 1937, pursuant to the provisions of the Bonneville Project Act (16 U.S.C. 832; 50 Stat. 731), the Bonneville Power Administration (BPA) was given the authority to build and operate transmission facilities and dispose of electric power to be generated by the Federally constructed Bonneville Dam located on the Columbia River. BPA's authority has been statutorily expanded over the years so that today it transmits and markets the power generated at 30 Federal dams constructed by the Bureau of Reclamation (now the Water and Power Resources Service) and the Army Corps of Engineers located in the Pacific Northwest. At present, BPA markets over 50 percent of all the electricity consumed in its marketing area. This power is transmitted through a vast system of power lines built by BPA (80 percent of the region's high voltage transmission

on Interior and Insular Affairs included: H.R. 3508, by Mr. Ullman (for himself, Mr. Foley, Mr. McCormack, Mr. Duncan of Oregon, Mr. Hansen, Mr. Pritchard, Mr. Symms, Mr. AuCoin, Mr. Bonker, Mr. Dicks, Mr. Lowry, and Mr. Swift); H.R. 4137 and H.R. 4159, by Mr. Weaver; H.R. 5146, by Mr. Ullman; and H.R. 6677, by Mr. Swift.

lines are BPA's), and the dams and transmission system are collectively referred to as the Federal Columbia River Power System (FCRPS).

BPA has no express statutory authority to own, construct or purchase the output or capability of electric generating plants except to meet short term deficiencies. Its sole statutory duty is to market and transmit the power generated at Federal hydroelectric projects. Under a "regional preference and reciprocal act" (16 U.S.C. 837; 78 Stat. 756), BPA's marketing area is defined as including the States of Washington, Oregon, Idaho, and that part of Montana lying west of the Continental Divide. That Act also prohibits BPA from selling Federal power to entities outside the region if there is a demand for that power within the region, and affords similar regional priority with respect to other Federal projects outside the Pacific Northwest for sales to the Pacific Northwest.

The original Bonneville Project Act, like other Federal power marketing laws, contains a "preference clause". This clause requires that BPA, although statutorily authorized to sell power to all types of customers, must give first right and priority to that power to "public bodies and cooperatives". "Public bodies" are defined to include "States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof". If a shortage of power is contemplated, BPA's other customers must do without, in order that "public bodies and cooperatives" continue to receive the Federal power to which they are entitled.

The class of customers generally considered within the definition of "public bodies and cooperatives" is quite large and diverse. It is presently composed of 36 municipal utilities, 54 rural electric cooperatives, and 26 entities known as PUDs (Public Utility Districts in Washington and People's Utility Districts in Oregon) — a total of 116 "public bodies and cooperatives". These customers are collectively referred to as "preference customers" of BPA. BPA's present con-

tracts with these customers expire during the period from 1983 to 1994.

For a variety of reasons, preference customers proliferated in Washington while meeting with only limited organizational success in Oregon, Idaho, and western Montana. As a consequence, 57 percent of the residential consumers in Washington today are served by preference customers of BPA while only 21 percent, 18 percent, and 21 percent of the residential consumers in Oregon, Idaho and western Montana, respectively, are served by preference customers of BPA. Those consumers not served by preference customers are served by the seven investor-owned utilities of the region. These utilities are referred to as "IOU's".

During BPA's early years, the type of utility ownership serving an area was of little practical consequence. Because of the massive, preinflation era development of Federal dams in the Pacific Northwest, there was an abundance of low cost Federal hydropower, and BPA was able to meet the needs of its preference customers with substantial amounts of Federal hydro remaining. This surplus power was sold to the IOUs in the region and directly to aluminum and other electro-process industries which located in the region during the 1940's and 1950's because of the abundance of power. These industrial customers are directly served by BPA and, hence, are known as direct-service industrial customers or "DSIs". BPA's contracts with DSIs contain provisions whereby BPA can "interrupt" or curtail deliveries of power to the fifteen operating DSIs (six of which are aluminum companies) under a variety of operating and planning contingencies and therefore provide the region with valuable and necessary energy and capacity reserves. Together, the DSIs account for about one-third of BPA's firm and non-firm energy sales. BPA's present contracts with the DSIs expire during the period from 1981-1991.

By the mid-1960's, it became apparent that Federal hydropower abundance would soon come to an end. The Pacific Northwest had run out of economic and environmentally acceptable new sites for large scale, multi-purpose Federal hydroelectric projects. This, combined with projected increases in electrical energy consumption, indicated to BPA and others that additional non-Federal sources of power would soon be required to meet the needs of the region.

Faced with this perceived need, BPA, in cooperation with over 100 utilities in the region, embarked upon Phase I of the Hydro-Thermal Power Program. Under this program, BPA would continue to build the region-wide high voltage transmission system while the utilities in the region would be responsible for building and operating thermal (coal and nuclear) plants sized, located and scheduled to meet regional loads. To provide for the expansion of the region's power supplies and to reduce financing costs for preference customers building plants, BPA developed the concept of "net billing".

Under net billing, a preference customer of BPA agrees to pay a certain percentage of a thermal plant's annual costs in return for an equivalent percentage of that plant's output. The preference customer then assigns its percentage of project output to BPA and BPA credits the preference customer's monthly bill for other energy and services received from BPA with an amount equal to the preference customer's share of the monthly costs of the thermal plant.

In other words, the preference customer receives a monthly power bill from BPA "net" of its share of thermal plant costs. Once BPA receives the preference customer's share of the output of the thermal plants, it combines those resource costs with that of the Federal hydroelectricity, in keeping with normal utility rate-making practices, and sells the aggregate supply to all its customers, including the DSIs, at "melded" rates sufficient to recover all of the costs

of producing and transmitting both the thermal and Federal hydro.

Net billing allowed BPA to use its limited authority to acquire non-Federal power without obtaining direct statutory authority to purchase power on a long-term basis. Net billing was specifically approved in the reports accompanying the Public Works Appropriations Acts of 1970 and 1971, as Congress was kept apprised of progress of the Hydro-Thermal Program, although some have criticized the appropriateness of this kind of congressional authority.

Net billing was also supposed to reduce the costs of thermal plants built by preference customers since, under the net billing agreements, BPA was required to credit each preference customers' power bill with that customer's share of the thermal plant's cost, regardless of whether BPA actually received power from the plant. This shifted the risk of a failed plant, or "dry hole" as it is called, from the owner systems to all of BPA's customers in the region whose rates would be raised to compensate for the costs of the non-producing plant. This made revenue bonds sold by these preference customers to finance the thermal plants more secure. This, in turn, led to better bond ratings with lower interest rates and lowered overall construction costs.

The IOUs in the region did not participate in net billing, partly because BPA did not sell them any significant power to net bill against. Under Phase I, the IOUs were expected to build their own thermal plants to meet their load growth requirements and to replace the hydropower they had been receiving from BPA but would lose in 1973 when their 20-year power sale contracts with BPA expired. BPA could not renew the IOUs contracts because it estimated that it would need the power to serve preference customers, as mandated by the preference clause, and to serve the DSIs as required by their contracts still in effect. (The IOUs have not received any firm power from BPA since 1973. However, estimates in the late 1960's indicated that thermal

power costs would be only slightly higher than the cost of Federal hydro. Thus, the IOUs and their retail consumers were not expected to suffer severe cost impacts as a result of losing access to BPA wholesale power.)

The utilities in the region began to implement Phase I immediately. The IOUs began constructing their thermal plants and the preference customers, through a joint operating agency known as the Washington Public Power Supply System (WPPSS) began constructing the net billed plants. In addition, the utilities and BPA sought enactment of legislation which would allow BPA to operate on a "self-financed" basis, whereby BPA could directly apply its revenues to its costs and would be authorized to sell bonds to the U.S. Treasury to raise funds to construct additions to the regional transmission system. This legislation, which was eventually enacted in 1974 as the Federal Columbia River Transmission System Act (16 U.S.C. 838; 88 Stat. 1376), was intended to free BPA from the uncertainties of the appropriations process (though Congress retained considerable authority to disapprove any element of the BPA program) and to allow BPA to construct transmission additions on a timetable compatible with that of the thermal plants.

Phase I soon ran into trouble. First, the costs of the net billed plants began to rise, which would soon exhaust the net billing capability of the BPA System. Second, in 1973, the Internal Revenue Service issued regulations which effectively prevented further participation by BPA in net billing. Third, thermal plant cost escalation also struck the IOUs. This, in turn, forced the IOUs to raise their retail rates which, in many instances, meant that customers of IOUs would end up with higher retail rates (as much as 300% higher) than customers of preference customers of BPA. Rates of preference customers were also going to go up because of the cost escalations of the net billed plants, but these escalations would be mitigated somewhat for many years since the high cost net billed resources

were to be "melded" with a large block of quite low cost Federal hydro.

Faced with the limitations of Phase I, the utilities and BPA embarked upon Phase II of the Hydro-Thermal Power Programs in early 1974. Under Phase II, each class of utility agreed to build its own new generation (no net billing for preference customers) and the DSIs were to help make the plan economically feasible by providing a market for any excess power from Phase II projects. As before, BPA would provide certain transmission and other such services such as peaking and reserves. However, Phase II was killed before it got off the ground by a 1975 Federal District Court ruling requiring the preparation of an environmental impact statement on BPA's role in the regional power system. The delay associated with the preparation of the EIS and soaring construction costs created substantial power planning uncertainties for the region's utilities and DISs and, as a result, Phase II was scrapped.

The uncertainties caused by the demise of Phase II were compounded on June 24, 1976, when BPA, in furtherance of its belief that Federal power would not be adequate to meet the projected demands of its preference customers, issued Notices of Insufficiency to these customers. These notices had the legal effect of relieving BPA of liability for any failure to satisfy its preference customers load growth needs after July 1, 1983. BPA also informed its DSI customers that it would probably not be able to renew their power sale contracts when they expire in the period from 1981 to 1991 since it will need the energy "freed up" with the expiration of those contracts to meet the growing requirements of its preference customers, which, by virtue of the preference clause, have first right to it.

Additional power planning uncertainties arose on July 28, 1977, when legislation was enacted in the State of Oregon creating the Oregon Domestic and Rural Power Authority (DRPA). This legislation is intended to make the entire

State of Oregon a preference customer of BPA for the purpose of securing a pro rata share of Federal hydro sufficient to meet the total demands of Oregon domestic and rural consumers.

The impetus for DRPA can be traced back to BPA's early years. As was mentioned above, preference customers flourished in the State of Washington but not in Oregon, Idaho and western Montana. While all types of utilities (including IOUs in Oregon) were receiving low cost Federal hydro from BPA, this difference was of no consequence. However, since 1973, when BPA stopped selling power to IOUs, they have had to rely on (as it has turned out) increasingly expensive thermal power. Preference customers, on the other hand, still rely primarily upon low cost Federal hydro. Consequently, wholesale power costs to IOUs are usually higher than those faced by preference customers in the region. Since Oregon is primarily served by IOUs and Washington is primarily served by preference customers, consumers in Oregon (and Idaho and western Montana), on the average, pay more for their electricity at retail than those in Washington.

The State of Oregon has not been alone in its efforts to obtain access to the supply of Federal hydro. On November 14, 1977, the City of Portland, Oregon, filed two lawsuits against BPA in Federal District Court in Portland in an attempt to secure Federal hydro from BPA for the city, which is presently served by two investor-owned utilities. In addition, efforts are being made within the State of Oregon and elsewhere in the region to form new "public bodies and cooperatives" eligible to receive Federal hydro from BPA.

BPA, in recognition of the fact that the Federal resources available to it will be insufficient to meet the requirements of its existing preference customers after 1983, let alone the requirements of any new preference customers such as the Oregon Domestic and Rural Power Authority, began

the process of developing a policy for allocating the Federal power it sells and issued a proposed allocation policy in September, 1979. Under this proposal, existing and any new preference customers will be limited to a pro rata share of BPA power after 1991. Unfortunately, these shares will fall far short of meeting their requirements, especially if most of the DSIs become customers of the preference utilities upon the expiration of their present contracts with BPA or if new preference customer systems are formed. Before 1991, no BPA customer will be assured of getting its requirements met by BPA or certain in advance how much power it will be entitled to. Existing preference customers will, for the most part, be limited to supplies in accordance with their existing contracts, although they may be able to secure some indeterminate amount of additional power as the DSI contracts expire. New preference customers will divide up most of the power "freed up" by expiring DSI contracts, but the amount available to each will be impossible to determine in advance and will likely be insufficient to meet their needs.

It is clear that this allocation policy, once it is finalized and reviewed administratively within the Department of Energy, will be vigorously challenged in the Federal courts. The cost disparity between the Federal resources marketed by BPA, even with the tremendous cost escalations of the three net billed thermal plants presently under construction in the region factored in, and alternative sources of energy is too great for any of the potential claimants to the BPA supply — existing preference customers, the DSIs and potential new preference customers — to ignore. These challenges will undoubtedly be taken to the nation's highest court and could literally take years to resolve. The City of Portland lawsuits and potential lawsuits over the status of Oregon's Domestic and Rural Power Authority will only add to the complexity and length of these legal proceedings.

While these proceedings are being resolved, no utility or other claimant will know for certain how much of the

Federal power it will eventually be entitled to receive from BPA and, consequently, will not know what energy resources it should plan to develop for its own use. Unfortunately, current forecasts already show that the Pacific Northwest could experience serious power shortages during any critical water year in the 1980's. The delays associated with the above-mentioned power planning uncertainties will only exacerbate this existing power supply problem.

Available evidence indicates that the frequency and extent of these projected power shortages could be substantially reduced through the implementation of cost-effective conservation programs throughout the Pacific Northwest region. Unfortunately, it appears that the region presently lacks the means with which to undertake the necessary regional conservation effort. Legal and institutional constraints have limited the ability of individual utilities in this area. The ability of BPA to carry out these conservation programs is also limited since its authority to engage in these activities is minor and since it cannot borrow funds to finance their implementation. As a consequence, the Pacific Northwest is unable to "capture" the economic and power supply benefits available through the implementation of effective, region-wide conservation programs.

Many regional observers are of the opinion that the above-mentioned power planning and supply problems and the pending administrative/judicial battle over the allocation of the Federal hydroelectric resources in the Pacific Northwest can only be avoided through enactment of Federal legislation which: (1) lets the Congress decide which regional entities should have access to the Federal hydroelectricity marketed by BPA; (2) authorizes BPA to play a central role in the Pacific Northwest's electric energy decision making process; and (3) expands the authority of BPA to permit it to acquire additional resources on a long-term basis to meet the needs of the region. In addition, it is believed that such legislation can provide the institutional framework necessary for the implementation

of effective, region-wide conservation programs, allow the residential and small farm consumers of the region's non-preference utilities to share in the economic benefits of the Federal hydroelectric resources without impinging upon the protections provided to existing or new preference customers of BPA by the preference clause of the Bonneville Project Act, establish a workable public planning process, and facilitate the protection, mitigation, and enhancement of the region's fish and wildlife resources. Finally, it is felt that these legislative goals can be accomplished without adversely affecting other regions of the nation.

The power planning and supply uncertainties presently facing the Pacific Northwest, if left unresolved, could eventually lead to severe economic, social, and environmental disruptions throughout the region. Most parties agree that this type of Federal legislation, although providing for the expansion of BPA's authorities, properly recognizes the unique Federal presence in the Pacific Northwest without creating precedents for other regions and offers the only viable solution to the region's electrical energy problems.

EXPLANATION OF S. 885, AS RECOMMENDED BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The Committee on Interior and Insular Affairs adopted one amendment to S. 885 striking all after the enacting clause and inserting in lieu thereof the text of a substitute bill. The following explanation is of this Committee substitute and all references to "the bill", "the legislation", or "S. 885" in the explanation are to this Committee substitute.

The substitute recommended by the Committee on Interior and Insular Affairs contains a variety of provisions designed to enable the Pacific Northwest to solve the electric power planning uncertainties presently facing it, including these basic features: (1) The establishment of a

comprehensive public planning process; (2) a requirement that the Administrator of BPA offer new long-term power sale contracts to preference customers, Federal agencies, investor-owned utilities, and existing direct-service industrial customers of BPA; (3) a power exchange for the benefit of the region's residential and small farm consumers; (4) a grant of additional authority to the Administrator of BPA to require him to acquire on a long-term basis the resources necessary to meet his contractual requirements to his customers; (5) revised rate directives; (6) comprehensive energy conservation provisions; and (7) provisions for the protection, mitigation and enhancement of the fish and wildlife resources of the Columbia River and its tributaries.

Public planning process

The heart of the public planning provisions of this legislation is contained in section 4(a) which establishes an eight member Pacific Northwest Electric Power and Conservation Planning Council. The Council will be composed of two members from each of the States of Washington, Oregon, Idaho, and Montana and they will be appointed by their respective Governors in accordance with applicable State law. The Council members are to be considered employees of their respective States (not of the United States) and will be compensated and subject to removal in accordance with applicable State law.

The chief task of the Council will be to prepare, adopt and periodically review and revise, after public hearings and participation, a regional conservation and electric power plan primarily for the purpose of guiding the Administrator in the exercise of the resource acquisition authorities granted him by section 6 of this legislation (sec. 4(d)). Pursuant to section 4(e)(2), the plan must set forth a general scheme for the implementation of the Administrator's conservation and resource development authorities pursuant to section 6 with due consideration by the Council

of environmental quality, compatibility with the existing power system, protection, mitigation and enhancement of fish and wildlife and other appropriate criteria. In addition, under section 4(e)(1), the plan must give the following priority to cost-effective resources the Administrator may implement or acquire: (1) conservation; (2) renewable resources; (3) resources utilizing waste heat or having high fuel conversion efficiency; and (4) all other resources. Section 4(e)(3) sets out the specific elements to be included in the plan. As more fully described below, the plan must also contain provisions relating to model conservation standards and fish and wildlife protection, mitigation and enhancement measures.

In addition to the public participation and input which will come about as a result of the preparation and adoption of the regional plan, the bill facilitates public input and knowledge by requiring, in section 4(g), that the Council and the Administrator inform the public on major regional power issues, obtain their views on such issues, and secure the advice and consultation of the Administrator's customers and others.

New long-term power sale contracts

Provisions governing power sales by BPA are contained in Section 5 of S. 885.

Specifically, section 5(b)(1) requires the Administrator, if requested, to enter into long-term power sale contracts with both preference and investor-owned utilities in the region to supply them with the firm power they need to meet their firm loads in the region to the extent they cannot meet their own loads with their own resources. The practical effect of this mandate is that: (1) preference utilities, whose current loads are now almost entirely met by BPA, will continue to have all of their firm power needs in the region met by BPA, and (2) investor-owned utilities, which already own most of the resources necessary to meet their

existing loads, will receive from BPA the power needed to meet their firm load growth requirements within the region. Section 5(d)(1) of the bill authorizes the Administrator to sell power to its existing direct-service industrial customers and requires him to offer to such customers initial long-term power sale contracts that provide them with amounts of power equivalent to that provided them under their existing contracts with BPA; however, sales to new DSI customers are expressly prohibited (sec. 5(d)(2)). These new DSI contracts must continue to provide reserves for the region. Finally, section 5(b)(3) authorizes BPA to sell power to Federal agencies in the region.

Pursuant to section 5(g), the Administrator is required to offer all of these customers initial long-term contracts.

As more fully described below, section 6 of S. 885 requires the Administrator to acquire on a long-term basis sufficient resources, including conservation, necessary to fulfill his contractual obligations to his customers. However, the legislation recognizes that these resource acquisition authorities may prove to be inadequate and therefore requires the Administrator to include in contracts with utility and Federal agency customers provisions permitting him to restrict his obligations to meet the full requirements of such customers in the future if he determines, after a reasonable period of experience under this legislation, that he cannot be assured on a planning basis of being able to acquire the necessary resources (sec. 5(b)(5)).

It is anticipated under this legislation that each BPA customer group will provide BPA, through the acquisition procedures of section 6, with sufficient power to meet each such customer group's load requirements. Section 5(e) of S. 885 will encourage these customer groups to actually provide BPA with such resources since it provides that customers will not be restricted pursuant to section 5(b) below the amount of power that they have provided BPA pursuant to section 6.

Section 5 of S. 885 also contains provisions designed to insure that preference customers of BPA continue to have supply preference to the amount of resources to which the preference clause applies. The most significant of these is section 5(a) which provides that all power sales by BPA pursuant to this legislation "shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937. . . . and, in particular, sections 4 and 5 thereof." In addition, section 5(b)(6) prohibits the Administrator from imposing restrictions on preference customers and Federal agencies if such restrictions would reduce the total contractual entitlement of such customers to an amount less than the amount of power to which the preference clause applies — the Federal base system resources. Taken together, these and other provisions of section 5 will make certain that all preference customer contract requirements will continue to have a priority over BPA sales to other customers.

Residential power exchange

Section 5(c) of S. 885 contains provisions for a residential power "exchange". Under these provisions, any utility in the region would be entitled to sell to BPA an amount of power equal to the utility's residential and small farm load at the "average system cost" of such power and BPA would be required to sell back to each such utility an equivalent amount of power at a rate identical to what preference customers pay BPA for power to meet their "general requirements" (subject to a "rate ceiling").

Although this exchange is technically available for use by any utility in the region, including preference utilities, it is anticipated that the region's investor-owned utilities will make primary use of it. This exchange will allow the residential and small farm consumers of the region's IOUs to share in the economic benefits of the lower-cost Federal resources marketed by BPA and will provide these consumers wholesale rate parity with residential consumers

or preference utilities in the region. Customers of preference utilities will not suffer any adverse economic consequences as a result of this exchange since, as discussed below, the direct-service industrial customers of BPA are required to pay the costs of the exchange during its initial years while a "rate ceiling" protects the customers of preference utilities during later years.

The cost benefits of any exchange are required under section 5(c)(3) to be passed directly through to the appropriate residential and small farm consumers. In addition, section 5(c)(2) requires that the amount of power permitted to be exchanged must be "ramped" in, beginning at 50 percent of the utility's residential and small farm load in 1980 and increasing to 100 percent of such load in 1985.

Authority to acquire resources

Section 6 of the legislation authorizes and requires the Administrator of BPA to acquire on a long-term basis sufficient resources, including conservation, to meet his section 5 contractual obligations to his customers. This resource acquisition authority, by providing the Administrator with the ability to expand the energy resource pool available to him, allows the Administrator to enter into the long-term power sale contracts with preference and investor-owned utilities, Federal agencies and existing direct-service industrial customers and obviates the need for him to administratively allocate the limited amount of Federal resources among existing and potential claimants to it. Thus, the Pacific Northwest will be able to avoid the power planning and supply uncertainties inherent in such an administrative allocation of over one-half of the region's electrical energy resources.

Specifically, section 6(a) of S. 885 requires BPA to: (1) acquire all conservation resources and renewable resources installed by residential and small commercial consumers, and (2) implement all conservation measures, including loans and grants for insulation and weatherization, which

are determined to be consistent with the plan developed by the regional Council pursuant to section 4 or, if no plan is in effect, consistent with sections 4(e)(1) and (2). Section 6(b) requires BPA to acquire sufficient resources to meet its contractual obligations, after taking into account planned savings from measures provided for in section 6(a), which are determined to be consistent with the plan, or, in the absence of a plan, with sections 4(e)(1) and (2). Section 6(c) sets out additional procedural requirements which must be met in the case of any "major" resource acquisition proposal. These requirements include detailed notice, hearing and decision-making procedures and a requirement that any major resource acquisition proposal found to be inconsistent with the plan or, in the absence of a plan, with sections 4(e)(1) and (2) must be specifically authorized by Act of Congress.

The authority to acquire resources under section 6 will not permit BPA to construct or own any generating facility; rather, it will permit BPA to purchase the output or, to reduce unnecessary costs of resources not yet constructed, the capability of resources owned and operated by other entities in the region.

Revised rate directives

Section 7 of the legislation sets out the requirements BPA must follow when fixing rates for the power sold its customers under this legislation. Subject to the general requirement (contained in section 7(a)) that BPA must continue to set its rates so that its total revenues continue to recover its total costs, BPA is required by the legislation to establish the following rates:

A. The lowest rates will be reserved for the normal loads ("general requirements") of preference utilities and for the power sold to utilities under the section 5(c) exchange provisions for service to their residential and small farm loads (sec. 7(b)(1)).

B. A higher rate will apply to the load growth of the region's investor-owned utilities and for the power needed by preference utilities to meet any "new large single loads" they may have (sec. 7(f)).

C. The direct-service industrial customers of BPA will pay rates prior to 1985 sufficient to cover the cost of resources required to serve them plus the otherwise unrecovered cost of the section 5(c) exchange power. After 1985, the direct-service industrial customers rates will be based on the retail industrial rates charged by BPA's preference utility customers (sec. 7(c)). In essence, the DSIs by paying these higher rates make it possible for the residential and small farm consumers served by the region's investor-owned utilities to share in the economic benefits of the Federal resources without increasing power costs for preference utilities and their customers.

As an added protection against preference utilities and their customers suffering adverse economic consequences as a result of this legislation, section 7(b)(2) establishes a "rate ceiling" which is hypothetically intended to insure that these customers' rates will be no higher than they would have been had the Administrator not been required to participate in power sales or purchase transactions with non-preference customers under this legislation.

Energy conservation provisions

S. 885 contains a variety of comprehensive and inter-related energy conservation provisions designed to encourage and achieve cost-effective conservation within the Pacific Northwest.

As was noted above, section 6(a) of the legislation requires the Administrator of BPA to implement all conservation measures and acquire consumer-installed renewable resources as are cost-effective, through a variety of measures including loans and grants to consumers for insulation and

weatherization. Section 6(b) permits the Administrator to acquire other resources to meet his contractual obligations but only after taking into account planned conservation savings under section 6(a). (The section 3(4) definition of "cost-effective" also gives conservation measures a 10 percent advantage over all other resources.) Thus, sections 6(a) and (b) together require the Administrator to achieve all available conservation and prevent him from acquiring non-conservation resources without first taking into account planned savings from conservation.

Section 4(d) requires the preparation of a regional electric power and conservation plan in which conservation would have first priority. This plan would consist of, among other things, an energy conservation program including model conservation standards applicable to electrical energy consuming activities. Under section 4(f), surcharges of from 10 percent to 50 percent on BPA rates could be assessed customers or jurisdictions which do not implement the standards or achieve comparable energy savings. Thus, the bill directly encourages the use of authorities by State and local governments to achieve energy conservation.

Section 6(h) requires the Administrator to pay billing credits (reductions in customer's bills) for customer conservation activities independently undertaken which reduce the demand on BPA. This provision is expected to induce local utility initiative to reduce energy demand. In addition, retail rate structures which reduce demand would qualify for such credits under section 6(h)(5).

Finally, section 8(d) increases BPA's borrowing limit to establish a \$1¼ billion revolving fund for conservation and renewable resource loans and grants. This authority would help finance the conservation actions authorized by section 6(a) and other provisions of the bill and would be supported solely by BPA revenues.

Fish and wildlife provisions

This bill provides, primarily through section 4(h), a mechanism agreeable to both the power and fisheries interests in the Pacific Northwest for developing a comprehensive program to protect, mitigate and enhance fish and wildlife resources affected by the hydroelectric facilities on the Columbia River and its tributaries. The bill creates a forum for the resolution of conflicts between fisheries and power interests on this unique and complex river system, and provides a means for funding the fish and wildlife provisions adopted as part of the program. Although this approach is not intended to create any new obligations with respect to fish and wildlife, it will provide a system for insuring that existing fish and wildlife obligations are fulfilled while simultaneously assuring the region an economical and reliable power supply. This approach should work extremely well on the Columbia River and its tributaries without creating an adverse precedent for either fisheries or power interests in other regions of the country.

Specifically, section 4(h) requires the Council to promptly develop a comprehensive program of fish and wildlife measures based on recommendations of the region's fisheries agencies, utilities and others. The section sets out specific criteria such recommendations must meet in order to be included in the program. Once developed and adopted, the program will be incorporated into the regional electric power and conservation plan, but will also exist independently of the plan. BPA is authorized to use its power revenues and borrow from the Treasury for the purpose of implementing the program. Other Federal agencies, whose existing authorities are not changed by this legislation, are required to take the fish and wildlife program into account in exercising their independent statutory responsibilities. Finally, although section 4(h) does not apply to rivers in the region other than the Columbia River and its tributaries, the fish and wildlife resources on those other rivers will be protected under this legislation through other provisions

designed to minimize environmental impacts generally in the implementation of this Act.

This legislation does not itself authorize any appropriation of water for fisheries purposes; all actions of other Federal agencies, including actions to assist fish migration, must be taken under other authorities. The goal of the program is not to increase the obligations of water project owners and operators, but rather to go beyond a project-by-project approach on a river system whose multiplicity of projects and interdependent biological species makes a project-by-project approach unsatisfactory for all involved parties.

SECTION-BY-SECTION ANALYSIS OF S. 885, AS RECOMMENDED BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

SECTION 1 — *Short title and table of contents*

This section provides the short title, the "Pacific Northwest Electric Power Planning and Conservation Act" and a table of contents.

SECTION 2 — *Purposes*

This section establishes purposes of the bill that emphasize both the uniqueness and the multi-purpose character of the Pacific Northwest's power supply system in general and the Federal Columbia River Power System in particular. These purposes, which are given substantive effect through other provisions of the bill, are to be consistent with one another and with other laws.

SECTION 3 — *Definitions*

This section contains definitions of terms used throughout this legislation.

Section 3(1) defines "acquire" and "acquisition" to make clear that use of these terms in this bill does not authorize BPA to own or construct generating facilities.

Section 3(2) defines "Administrator" as the Administrator of BPA.

Section 3(3) defines "conservation" as a reduction in electric power consumption resulting from increases in efficiency in energy use, production or distribution.

Section 3(4) defines "cost-effective" for purposes of regional power planning and resources acquisition. The definition essentially requires a full marginal cost comparison among alternatives such as conservation and generating resources, and specifies the basis of such comparisons. This definition insures that decommissioning costs and projected increases in fuel costs are specifically included in the estimate of the direct costs of a resource.

The Committee intends that the appropriate historical experience with similar resources shall be the starting point in determining the estimated amount of power that particular types of resources may produce, and that those who contend that such estimates should reflect other factors (e.g., technological improvements) should have the burden of demonstrating the appropriateness of such factors.

Section 3(5) defines "consumer" as an end user of electric power, as distinct from a wholesaler of electric power such as a utility.

Section 3(6) defines "Council" to mean the regional council contemplated under section 4.

Section 3(7) defines "customer" as anyone who purchases power from BPA. Thus, direct-service industries are "customers" as well as "consumers" for purposes of this bill; utilities are "customers" only.

Section 3(8) defines "direct service industrial customer" as an industrial customer that purchases power from BPA.

Section 3(9) defines "electric power" to mean electric peaking capacity or electric energy, or both. This definition already applies to BPA through the Federal Columbia River Transmission System Act, and avoids the need to use the terms "peaking capacity" and "energy" throughout the bill except where the distinction is necessary and made.

Section 3(10) defines "Federal base system resources" to include existing and future Federal hydro projects, resources acquired by BPA under existing contracts, and resources acquired as replacements therefor. This defined term is used in several of the bill's provisions that protect the preference rights of public bodies and cooperatives.

Section 3(11) defines "Indian tribe" in a manner consistent with the definition used in similar resource management laws.

Section 3(12) defines "major resources". The definition includes a size limit (fifty average megawatts), since the bill draws substantive and procedural distinctions between major and non-major resources. The definition also includes, in the case of resources acquired by BPA, a durational criterion (more than five years), since BPA is already authorized under the Federal Columbia River Transmission System Act to make short-term purchases (five years or less) to meet its contractual obligations.

Section 3(13) defines "new large single loads", a term with rate consequences under sections 5(c) and 7(b) of the legislation. Under this definition, September 1, 1979, is the "cut-off" date for all categories of new large single loads; no cut-off date distinction is made between industrial and non-industrial loads of this type. Thus, a large single load of a utility is a "new large single load" if it was not contracted for or committed to by that utility prior to such date.

Section 3(14) defines "Pacific Northwest", "region" or "regional".

Section 3(15) defines "plan" to mean the regional electric power and conservation plan to be developed by the Council under section 4 of the legislation.

Section 3(16) defines "renewable resource", and includes not only generating resources using a renewable source of energy but also resources that reduce consumer power needs through direct application such as solar hot water systems. "Breeder" or "fusion" projects cannot qualify as renewable resources under this definition.

Section 3(17) defines "reserves", which represent power available to protect firm loads from various shortage or operating situations. BPA obtains a portion of its power system reserves through rights to curtail power deliveries to direct-service industries; the term is also used in section 6(h) with respect to calculation of billing credits for BPA's customers.

Section 3(18) defines "residential use" and "residential load", a term that determines the amount of power a utility may exchange with BPA under section 5(c). This term includes all normal residential loads along with the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm. This limit recognizes the higher lift distances and different soil conditions in areas east of the Cascade mountains.

Section 3(19) defines "resource" to mean either electric power (including actual or planned capability of generating resources) or reductions in load (including actual or planned savings from conservation measures and direct-application renewables). Conservation is therefore a resource for purposes of this bill. The definition also helps make clear, as does section 3(1), that if BPA acquires a resource,

it does not become the owner of an electric generating facility.

Section 3(20) defines "Secretary" to mean the Secretary of Energy.

SECTION 4 — *Regional planning and participation*

Section 4(a)(1) through (3) establishes an eight member Pacific Northwest Electric Power and Conservation Planning Council which will be considered formed upon the appointment of six members. The Governors of Idaho, Montana, Oregon, and Washington, subject to applicable State law, may each appoint two members to the Council from their respective States. Applicable State authorities and appointing actions of the States constitute their agreement to the exercise by the Council of its functions under this legislation, to which the Congress consents. The arrangement contemplates that State officials on the Council would be authorized to carry out their functions under State law consistent with the scheme of the bill. Council members are deemed to be employees or officers of their respective States, and are subject to removal pursuant to, and compensated in accordance with, applicable State law.

The Committee notes that the Appointments Clause of the United States Constitution has been raised as a possible impediment to gubernatorial appointment of these Council members. However, the Committee believes that the Constitution allows the Congress, through the broad powers it possesses under the Commerce and Property Clauses of the Constitution, to share with the States the type of responsibilities granted to the Council by this legislation and that the Appointments Clause does not prevent an interstate arrangement such as this where the Congress expressly consents to share responsibility with the States in an area of mutual, rather than purely Federal, responsibility. Energy planning is interstate in character, particularly in the Pacific Northwest where the four States and the Federal Government are bound together by their shared interest in,

and mutual dependence upon, an integrated regional power system.

The Committee believes that gubernatorial appointment of Council members will most fully carry out its intent to establish an effective regional power and conservation planning council to assure maximum regional cooperation in energy planning and to help guide the new authority granted to BPA by this legislation. The Council arrangement also permits early State involvement in energy planning, to complement those State authorities reserved by section 10, and to recognize the shared State and Federal authorities in energy planning and regulation that would continue under this Act. In addition, the Committee understands that the size, composition and functions of the Council as set out in this section and section 6 are uniquely acceptable to the major participants in regional discussions concerning these issues.

Section 4(a)(4) provides for a temporary Federally-appointed Council in the event that the State-appointed Council is unable to be formed or is found to be unable to perform its functions by a Federal Court of Appeals.

Under this provision, the Secretary of Energy would appoint two Council members from each State in a manner designed to assure continuity and prevent disruption of the Council's activities. Because this Federal appointment is intended to assure continuity, the Committee would encourage the Secretary to consider appointing those members already serving for the respective States or recommended by the appropriate Governors in the event that this provision becomes effective.

Members so appointed would serve until the Council terminated or until the defect that caused the State-appointed Council to fail was corrected by the States or the Congress, as appropriate. If the defect is not cured, the Federally-appointed Council would terminate at the end

of the second full Congress following the Secretary's first appointment, unless extended by Congress.

The Secretary is required to submit to the Congress, in consultation with the Governors, recommended legislation that would cure the defect that caused the State-appointed Council to fail and would once again permit State appointment.

In the event that the Council terminates after inaction by the Congress, the Administrator would not be able to acquire a major generating resource or to grant a billing credit involving a major generating resource until the expenditure of funds for that purpose had been specifically approved by the Congress.

As was noted above, the Committee believes gubernatorial appointment of Council members will most fully carry out its intent to establish an effective energy planning mechanism for the Pacific Northwest and that the Appointments Clause does not bar its formation or operation. However, in the event that a United States Court of Appeals determines that this type of arrangement is constitutionally infirm, in whole or in part, the Committee hopes that whatever relief is prescribed be as narrow as possible, with an eye towards preserving this Committee's essential objective, the perpetuation of regional energy planning substantially as envisioned in section 4. For instance, should such a court determine a particular, but not necessarily key activity to be unconstitutional, the Committee suggests that such responsibility alone be suspended and the larger planning scheme be allowed to function. Because of the urgent needs this legislation is designed to address, the Committee does not intend that this entire Act should fall on the basis of any judicial ruling if such a result can possibly be avoided.

Section 4(a)(5) sets out the requirements for voting by the Council. Under this section, either a simple majority, as long as the majority includes at least one member from

each State, or six votes, even though both members of a particular State vote "no", are required for adoption and amendment of the regional conservation and electric power plan. These voting requirements should adequately protect individual States and facilitate development of the regional plan upon which the entire conservation and resource program envisioned by the bill depend while at the same time avoiding the disruption possible if complete unanimity among the States was required for the adoption of the plan.

Section 4(a)(6) provides for selection of a Council Chairman from among its members, and specifies the procedures for calling meetings and for the submission of dissenting or additional views by any Council member.

Sections 4(a)(7) through (11) provide for appointment of Council staff; authority to request personnel from Federal agencies on a reimbursable basis; reliance, to the greatest extent practicable, on customers of the Administrator and other regional entities for expert and technical information; Council determination of its procedures and public access thereto as well as to its annual work program budget; provision to the Council by the Administrator and other Federal agencies of relevant information requested by it; and other administrative responsibilities and authorities of the Council.

Section 4(a)(12) directs the Administrator at the request of the Council to provide financial support for the performance of the Council's functions and to the States that have appointed members to the Council for their participation in, and activities related to, the Council.

Section 4(b) directs the Council to establish a voluntary scientific and technical advisory committee and authorizes the establishment of such other voluntary advisory committees as it deems necessary.

Section 4(c) directs that these Council advisory committees shall be composed of, and rely upon, to the greatest

extent feasible, the various Federal, State and Tribal governments, consumer groups and customers whose interests are affected by the committees. The committee intends that such committees shall be manageable in terms of total size and composition.

Section 4(d) sets out the Council's primary responsibility, to prepare and adopt within two years a regional conservation and electric power plan and to review and amend, if necessary, the plan at least once every five years. Public legislative type hearings are required to be held before adoption of the plan or substantial, nontechnical amendments to it.

Section 4(e)(1) directs that the plan give priority to resources that the Council determines to be cost-effective as follows: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or having high fuel conversion efficiency; and fourth, to all other resources.

Section 4(e)(2) requires that the plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 with due consideration to environmental quality, compatibility with the existing regional power system, protection, mitigation and enhancement of fish and wildlife, and other relevant criteria.

Section 4(e)(3) sets out the following specific elements that will be included in the plan: (1) an energy conservation program, including model conservation standards; (2) recommendations for research and development; (3) a methodology for determining "quantifiable environmental costs" under section 3(4); (4) a 20-year demand and resource forecast; (5) an analysis of cost-effective methods of providing reserves; (6) the fish and wildlife program adopted pursuant to section 4(h); and (7) a methodology for calculating model conservation surcharges, if recom-

mended. This section makes it clear that only these elements will be included in the plan and that the Council has full discretion to determine the amount of detail that is appropriate for each element in the plan.

Section 4(e)(4) requires the Council to study conservation measures reasonably available to direct service industrial customers and other major consumers of electric power. The study shall include an analysis of financial assistance that might be necessary and available to permit particular conservation measures to be implemented. This study is not required to be part of the plan.

Section 4(f)(1) describes the model conservation standards that are to be included in the plan. These standards are to be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers through financial assistance made available under this legislation. Consumers will therefore bear the cost of conservation measures that are cost-effective in terms of the electric rates consumers pay, while the cost of the additional increment of conservation that is cost-effective to the region will be met through financial assistance that BPA is required to provide under section 6(a).

Section 4(f)(2) describes the surcharge that the Council may vote to recommend that the Administrator impose on customers for those portions of their loads within States or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve energy savings that the Administrator determines are comparable to those which would be obtained under the model conservation standards established pursuant to this section. These surcharges shall not be less than 10 percent nor more than 50 percent of the Administrator's applicable rates for such land or portion thereof.

Section 4(g) directs the Council and the Administrator to undertake measures to insure wide-spread public involvement in the formulation of regional power policies and re-

quires the Council and the Administrator to take into account State and local elections in the region that bear on regional power policies.

Section 4(h) contains detailed provisions concerning the protection, mitigation and enhancement of fish and wildlife on the Columbia River and its tributaries and incorporates the recommendations proposed by an ad hoc committee of Federal, State and Tribal fisheries agencies, Federal power and water management agencies, and BPA customers.

Section 4(h)(1)(A): This subparagraph requires the Council to develop a unified program for the protection, mitigation and enhancement of fish and wildlife on the Columbia River and its tributaries. This provision recognizes that the history, problems and opportunities of the Columbia River system are unique, making such a program suitable and desirable for this particular river system but not for other rivers or systems in or out of the Pacific Northwest region. The provision therefore contains a non-applicability clause to ensure that the type of program contemplated by this legislation is not a precedent for other areas.

Section 4(h)(1)(B): This subparagraph requires the Council, as a first step in developing the program, to request promptly from the relevant fish and wildlife agencies their recommendations for (i) measures to protect, mitigate and enhance fish and wildlife affected by the hydroelectric projects of the Columbia River system, (ii) objectives for development and operation of such projects in a manner that will protect, mitigate and enhance fish and wildlife, and (iii) management coordination, research and development, and funding that will aid protection, migration and survival of anadromous fish. It is anticipated that because of the importance of non-firm power sales outside the Pacific Northwest and the opportunity value of such sales, at least some of these recommendations will explore alternative methods by which fish migration can be improved without unnecessary spillage of water.

Section 4(h)(1)(C)(i) established the procedure for the Council's solicitation of recommendations relating to protection, mitigation and enhancement of fish and wildlife.

Section 4(h)(1)(C)(ii) provides procedures for making the received recommendations and comments available to all relevant parties and the public, and for conducting hearings and otherwise ensuring public participation and comment on the recommendations.

Section 4(h)(1)(C)(iii) requires the Council to develop the program on the basis of the recommendations, comments and information received. The program is to consist of measures that protect, mitigate and enhance fish and wildlife affected by the Columbia River system while satisfying the power supply purposes of the Act. Enhancement measures that are designed to achieve protection and mitigation and that meet the criteria of Section 4(h) are to be included in the program. The latter statement helps clarify that in this context enhancement is not a new or additional obligation, but a means of fulfilling existing protection and mitigation obligations under the unique circumstances presented by the Columbia River power system.

Section 4(h)(1)(C)(iv) sets substantive criteria for measures included in the program. The criteria include: (1) complementary with other related efforts; (2) scientific support; (3) minimization of cost, not absolutely but for any given biological objective; (4) consistency with the legal rights of Indian tribes; and, in the case of anadromous fish, (5) provision for improved survival of such fish at hydroelectric facilities; and (6) provision for flows between such facilities to improve production, migration and survival of such fish as necessary to meet the sound biological objectives.

Section 4(h)(1)(C)(v) requires the Council to determine whether each recommendation is consistent with the pur-

poses of the Act, and to reconcile inconsistencies among individual recommendations in order to create an internally consistent program. The Council may decline to include a recommendation in the program only if that recommendation is (1) inconsistent with the purposes of the Act, (2) inconsistent with standards established for the program, or (3) less effective than an adopted recommendation in achieving protection, mitigation and enhancement.

Section 4(h)(1)(C)(vi) contains additional principles to guide the Council in developing the program. These include:

1. The use of enhancement as a tool for achieving off-site protection and mitigation (in appropriate circumstances), not as an additional obligation.
2. Consumers of electric power should bear only those costs attributable to electric power facilities and programs (but not the cost of measures designed to deal with impacts caused by other factors).
3. Monetary costs and power losses resulting from implementation of the program are to be allocated among projects, both Federal and non-Federal, in accordance with the relative impacts of individual projects and with system-wide objectives.
4. While the program shall include directly only those measures needed to deal with impacts caused by power facilities and programs, it may be integrated with similar efforts dealing with other impacts (or additional enhancement) to the extent the administration and funding of such additional efforts are provided through other provisions of law or ancillary agreements.

Section 4(h)(1)(C)(vii) sets a time limit for adoption of the program by the Council, requires the program to be included in the Council's regional power and conservation plan adopted pursuant to section 4(d), and provides for

judicial review of the Council's actions in adopting the program. The intent is that the program may exist independently of the regional plan, as well as being incorporated into that plan as one of the plan elements.

Section 4(h)(2)(A): This subparagraph requires BPA to use its funding authorities (i.e., borrowing and, potentially, appropriations) to protect, mitigate and enhance fish and wildlife to the extent such resources are affected by the hydroelectric projects of the Columbia River and its tributaries. (Section 8(b) provides BPA's authority to pay the costs of all acquired resources regardless of location, including fish and wildlife protection costs.) In doing so, BPA shall act consistently with the regional plan, the program developed under this subsection, the purposes of this Act and other provisions of law. BPA expenditures shall be in addition to, not in lieu of, other expenditures authorized or required to be made by other entities under other agreements or provisions of law. Other fisheries efforts outside this Act, for example, are expected to continue and to be funded separately.

Section 4(h)(2)(B): This subparagraph requires BPA to include proposed expenditures under this subsection in its budget submittals to Congress, and, in the case of major expenditures, to obtain approval in the same manner as is currently required for major transmission system additions.

Section 4(h)(2)(C): The allocation of particular costs to individual projects and among different project purposes, as is required by existing law, is preserved in this subparagraph to avoid establishing any precedent of a different allocation result. Thus, power, irrigation, navigation, recreation and other project purposes will continue to bear only their established shares of the total costs attributable to protection and mitigation measures. All expenditures by BPA are to be made on a reimbursable

basis vis-a-vis other project purposes, although BPA will have the flexibility to treat expenditures in excess of its allocated share as being payments for other project costs for which BPA is responsible under existing law.

Section 4(h)(3)(A): This subparagraph requires all Federal agencies with responsibilities for hydroelectric facilities on the Columbia River system to do two things. First, such agencies must exercise their responsibilities (in coordination with one another, and consistently with the purposes of this and other laws) to protect, mitigate and enhance fish and wildlife in a manner providing equitable treatment for such fish and wildlife relative to the other purposes for which the Columbia River system and facilities are managed and operated under other provisions of law.

Second, such agencies are required to take into account to the fullest extent practicable the program adopted under this subsection when they exercise their responsibilities. This provision does not change the existing statutory authority of other Federal agencies such as the Corps of Engineers or FERC. It does require them, in the interest of coordination, to recognize BPA's obligations under this and other laws and to take into account, at each relevant stage of their own decision-making (pursuant to existing processes), the decisions embodied as measures in the Council's fish and wildlife program. If such agencies reject the implementation of any measure contained in the program, they should indicate in writing the basis for that decision so that all parties will have a basis for understanding the decision.

Subparagraph 4(h)3(A) also requires the Administrator to reimburse non-Federal projects for monetary costs of power losses to the extent program measures not attributable to those projects themselves are imposed upon the projects as a result of the consideration given the program by other agencies (e.g., FERC).

Section 4(h)(4) requires reports to Congress by the council and the Administrator on the fish and wildlife program.

Section 4(h)(5) provides a means of ensuring that the program contemplated in this subsection is developed in timely fashion, even should the Council itself be delayed in formation or proven unable to function.

Section 4(i) requires the Administrator and Council to consult with BPA customers and to recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible for power supply.

Section 4(j) requires the Council and the Administrator to encourage the cooperation and participation of appropriate Federal, State, local and Tribal entities in the preparation, adoption and implementation of the regional plan.

SECTION 5 — *Sale of power*

Section 5(a) makes clear that all power sales under this bill are subject at all times to the Bonneville Project Act, particularly sections 4 and 5 of that Act. This provision therefore retains the preference and priority accorded public bodies and cooperatives in BPA power sales. Related preference protecting provisions include sections 5(b), 7(b) and 10(c).

Section 5(b)(1) requires BPA to offer to sell to each requesting utility the power needed by the utility to meet its firm load within the region in excess of the utility's own firm resources, and specifies the method of determining the utility's own firm resources. This section also clarifies that firm energy and firm peaking resources of a utility may differ and that the firm energy associated with the firm peaking component of a resource is the firm energy produced in the peaking use of that resource.

Section 5(b)(2) reaffirms the provisions of the Bonneville Project Act that BPA must be able to reduce its obligations to investor-owned utilities upon five years notice. The Committee does expect, however, that BPA can and should be able to provide a long notice period to these utilities to the extent practicable to facilitate orderly planning by these utilities.

Section 5(b)(3) authorizes BPA to sell power to Federal agencies in the region. Although Federal agencies are not preference customers, some have long depended on BPA for power, and it is intended that BPA continue to serve these agencies.

Section 5(b)(4) requires that BPA sales under this subsection be made, as they are today, only to entities meeting BPA's standards for service. This ensures that BPA will not be required to serve technologically unprepared or unsuitable customers.

Section 5(b)(5) continues the requirement of the Bonneville Project Act that BPA include in its contracts with utilities provisions permitting BPA to restrict its contract obligations to meet such customer's full requirements during any period of insufficiency. The subsection requires a reasonable period of experience under this Act prior to BPA's giving notice of a period of insufficiency, and also a reasonable notice period before any restriction becomes effective for preference customers and Federal agency customers. This subsection deals with restriction of contract obligations on a planning basis for future periods, not actual power deliveries during an operating shortage, since actual operating curtailments for utilities are imposed by State and local governments, not BPA.

Section 5(b)(6) specifies that the total contractual entitlements of preference customers and Federal agencies during any period of insufficiency shall not be less than

the total firm capability of the Federal base system resources. This is to protect preference. In order to aid planning by such customers, the subsection requires that the contract formula for allocating entitlements during any such period shall be on a uniform basis, and shall disregard resources of such customers other than those dedicated to their firm loads prior to the effective date of this Act. The subsection also makes clear that the actual contract entitlement of any such customer shall not exceed that customer's actual net requirements during any period of insufficiency.

Section 5(c) permits power exchanges between BPA and Pacific Northwest utilities for the benefit of residential and small farm consumers. The cost benefits of such exchanges are required to be passed through directly to the residential and small farm consumers themselves. Exchange agreements may be terminated by the utility under specified circumstances, and upon reasonable terms and conditions agreed in advance, but during any period of insufficiency a utility's entitlement under this section shall not be less than the amount of power BPA acquires from or on behalf of such utility under this section. The rate BPA pays for power so acquired shall be based on an "average system cost" methodology BPA develops in consultation with the Council, BPA customers and appropriate State regulatory bodies; the methodology is subject to review by FERC under this section and section 9(g). Paragraph (7) specifies certain costs that must be excluded from the amounts BPA pays for resources exchanged under this section. Such excluded costs include: the cost of additional resources in an amount sufficient to serve any new large single loads; costs of resources used to serve additional loads outside the region after the effective date of this Act; and costs of any generating facility which is terminated prior to initial commercial operation. This subsection also requires that the exchange be "ramped" in from 50

percent of the residential load in the year beginning July 1, 1980, to 100 percent in the year beginning July 1, 1985.

Section 5(b) mandates continued BPA power sales to existing direct-service industries and prohibits such sales to new DSIs. Existing DSIs will receive the amount of power to which they are entitled under present "Industrial Firm" power sales agreements. These agreements include contingent allowances for defined technological improvements (excluding plant expansion), but no additional BPA sales to existing DSIs are authorized unless the conditions of paragraph (3), including Council approval, are satisfied. The definition of "existing" direct-service industrial customers included in this subsection makes it clear that one DSI with a present contract with BPA but with no existing facilities shall not be considered an "existing" DSI for the purposes of this section.

Sales to existing DSIs are required under this subsection to continue to provide a portion of BPA's power system reserves. The Committee understands and intends that the new DSI contracts under the legislation will provide capacity reserves similar to those provided in the present contracts. Fifty per cent of the then operating DSI load may be restricted for a period of up to two hours to provide a forced outage or peaking power reserve. One hundred per cent of the DSI load may be restricted by BPA for up to five minutes whenever frequency problems arise on the regional grid.

The DSIs will also provide two types of energy reserves. Approximately 25 percent of the DSI load is to be treated as a firm load for purposes of resource operation and will provide an operating reserve that may be restricted by BPA at any time in order to protect the Administrator's firm loads within the region and for any reason, including low or critical streamflow conditions and unanticipated growth of regional firm loads. An additional 25 percent of the DSI load will be treated as a firm load for both

planning and operating purposes and will provide a planning reserve to protect the Administrator's firm loads against the delayed completion or unexpectedly poor performance of regional generating resources or conservation measures implemented or acquired by BPA.

Section 5(e) governs contractual entitlements of BPA customers during any period of insufficiency. Other provisions specify minimum entitlements based on the preference clause or section 5 contract rights; this provision by contrast governs entitlements based on power sold by the customers to BPA under section 6. Each customer's minimum entitlement will be the amount of power so sold to BPA, but not to exceed the customer's actual requirements (excess entitlements go first to customers of the same specified class). Entitlements of a customer under this subsection are in addition to entitlements under section 5 that are not subject to restriction. The Committee intends that BPA will reduce entitlements under this subsection, on a reasonable planning basis, to the extent the actual output of an acquired resource is less than its planned output, so that customers will have an obligation to plan additional resources to make up the difference. A copy of a letter from the Administrator of BPA to the Honorable James Weaver regarding the operation and effect of this subsection can be found later in this report.

Section 5(f) is a technical provision to insure that BPA has the ability to dispose of any temporary or incidentally surplus power under this Act and other laws applicable to BPA power sales.

Section 5(g) governs the offering of initial long-term contracts to BPA customers, including such matters as negotiation, timing of the contract offer, and date of contract effectiveness. Paragraph (6) specifies that the initial contracts with preference customers and Federal agency customers shall provide that during any period of insuffi-

ciency each such customer's contractual entitlement shall not be less than the amount of firm power such customer actually received from BPA in the year prior to the period of insufficiency. This aid to planning certainty during the initial contracts is intended to be compatible with, and not to diminish, the entitlements of such customers and other customers under section 5(e).

SECTION 6 — *Conservation and resource acquisition*

Section 6(a) requires BPA to acquire all conservation resources (including renewable resources installed to reduce loads of residential or small commercial consumers) and to implement all conservation measures BPA determines to be consistent with the plan, or, in the absence of a plan, with the provisions of sections 4(e)(1) and (2). Such measures and resources include, but are not limited to, loans and grants for insulation and weatherization, as well as other listed items.

Section 6(b) requires BPA to acquire sufficient resources to meet its contractual obligations, after taking into account planned savings from conservation and other listed factors. Except as otherwise specifically provided, resource acquisitions shall be consistent with the plan, or, in the absence of a plan, with the provisions of sections 4(e)(1) and (2). Paragraph (3), dealing with resources acquired to replace Federal base system resources, clarifies that BPA will be able to require that such replacement resources be developed and operated consistently with section 4(e)(2) of this legislation. Paragraph (4) requires BPA to continue to acquire and implement conservation measures and conservation resources and certain renewable resources pursuant to section 6(a) regardless of other resource acquisitions. Paragraph (5) requires BPA to exclude the costs, if any, of construction work in progress (that portion of rates related to construction work investment included in a utili-

ty's rate base during the construction period by State regulatory authorities) from any payment BPA may make to investor-owned utilities for a resource acquired under this subsection from them or for power exchanged by them under section 5(c). This provision does not effect BPA's authority to make payments for other costs to investor-owned utilities under resource acquisition contracts such as payments upon completion or termination of construction for financing costs capitalized during construction. It should be noted, however, that section 5(c) expressly excludes from BPA's payments for power acquired under that section the costs of any resource that is terminated prior to commercial operation.

Section 6(c) establishes procedures which govern all BPA actions on major resources. Paragraph (1) contains detailed notice, hearing and decision making requirements which BPA must follow on any major resource proposal and which require BPA to make a determination on whether or not the proposal is consistent or inconsistent with the regional plan, or if no plan is in effect, consistent or inconsistent with the provisions of sections 4(e) (1) and 2). Paragraph (2) provides for the Council to determine whether or not such a proposed action is consistent or inconsistent with the plan, or during the two years preceding plan adoption, consistent or inconsistent with the provisions of section 4(e)(1) and (2). Paragraph (3) provides that if either the Council or BPA determine that a major resource proposal is inconsistent with the plan, or, in the absence of a plan, inconsistent with the provisions of sections 4(e)(1) and (2), then BPA cannot implement such a proposal until the expenditure of funds for that purpose has been specifically authorized by Congress pursuant to bills reported from the committees of Congress having substantive jurisdiction over BPA's statutes. Paragraph (4) sets forth additional procedural steps BPA must follow prior to the implementation of any major resource proposal that BPA is authorized to undertake.

Section 6(d) authorizes BPA to acquire resources (other than major resources) that do not meet the provisions of section 4(e)(1) and (2), but that are experimental or developmental and that have the potential for providing cost-effective service.

Section 6(e) catalogues various of BPA's conservation and renewable resource authorities, and requires that maximum use be made of them. This subsection also requires that BPA work through its customers and other local entities to the extent practicable in making any direct arrangement with consumers.

Section 6(f) permits, under specified conditions, the funding or reimbursement by BPA of certain investigation and preconstruction expenses for resources that BPA may later acquire pursuant to section 6. However, this provision does not enable BPA to provide any such funding or reimbursement for resources that BPA foresees will be terminated or for termination of a resource as the result of a foreseeable and avoidable action of the resource's sponsor. This provision also protects against "bail-outs" by precluding BPA payments for costs incurred by a resource sponsor prior to the effective date of this Act or the effective date of any such agreement.

Section 6(g) provides for the coordination of Federal and State environmental impact statements.

Section 6(h) requires BPA to grant billing credits and provide services to any customer for independent conservation activities or resources undertaken by the customer or by political subdivisions to the extent that such actions reduce BPA's obligation to acquire additional resources. Independent conservation actions for purposes of this subsection are those that provide power savings beyond the savings provided through measures adopted as part of the plan or implemented or acquired by BPA in its implementa-

tion of this Act. Paragraph (2) provides for computation of the amount of energy and capacity on which credits shall be granted, and takes into account changes in customer power and reserve requirements on BPA. Paragraph (3) specifies the amount of the billing credit for conservation activities. Paragraph (4) specifies the amount for resources. Paragraph (5) clarifies that retail rate structures voluntarily implemented by BPA's customers shall qualify as measures for which billing credits shall be granted if such retail rate structures induce customers to conserve or to install consumer-owned renewable resources. Paragraph (6) contains requirements to be met prior to a billing credit being granted, including notice provisions, inclusion in BPA's budget submittal to Congress, and acceptance by the customer of certain contract provisions. These provisions are, first, that certain resources be offered to others for participation to the extent of amounts in excess of the customer's reasonable load growth, and, second, that the operators of generating resources agree as a condition of receiving the credit that the resources will be operated in a manner compatible with the planning and operation of the region's power system. The first of these contract provisions is designed to prevent a "freeze out" of other BPA customers for regional resources being constructed to meet another customer's load growth. Thus, a utility's "reasonable load growth" is intended to be based on such utility's then current 20-year load/resource forecast (before adjustment for conservation activities independently undertaken).

Section 6(i) provides for BPA to include in its resource acquisition contracts, and billing credit contracts for major resources, provisions assuring BPA of effective oversight with respect to resource development, construction, scheduling, operations, costs and environmental protection, including protection of fish and wildlife affected by the development of such resources.

Section 6(j) reaffirms the requirement of the Federal Columbia River Transmission System Act that BPA is a wholly self-financed agency, that its obligations are not obligations of the United States of America nor secured by the full faith and credit of the United States of America, and requires that all offerings and promotional material for the sale of obligations secured by BPA shall include this disclaimer. This subsection is intended to make clear that there are no "Federal guarantees" supporting BPA's obligations, which instead are secured solely by BPA's own revenues from the sale of power and other services.

Section 6(k) requires that benefits under section 6 be distributed equitably through the region, consistent with the provisions of this legislation and BPA's obligations to particular customer classes.

Section 6(l) requires BPA to investigate: (1) possibilities for obtaining economic power supplies from renewable resources outside the region; and (2) opportunities for mutually beneficial interregional power exchanges pursuant to provisions of this section.

Section 6(m) directs BPA to determine that reasonable opportunities to participate in major resources offered to BPA for acquisition have been offered to all Pacific Northwest utilities, or that a reasonable equivalent participation opportunity exists.

Section 6(n) allows the Council to authorize BPA to implement a non-major resource proposal notwithstanding a finding by the Administrator that such a proposal is inconsistent with the plan or, in the absence of a plan, with the provisions of sections 4(e)(1) and (2).

Section 6(o) permits the Council and any customer of BPA to request BPA to take action to carry out its responsibilities under section 6 and to require BPA to act on such requests in a prompt and specified manner. This section

allows the Administrator to decline to take the requested actions if, among other reasons, the Administrator determines that such a request would not be timely. This later provision is not intended to provide the Administrator with an open-ended excuse for not proceeding with the requested action; rather, it is intended to allow the Administrator to decline to take requested actions until he and the Council have had the opportunity to become familiar with the requirements and resource acquisition criteria established by this legislation.

SECTION 7 — *Rates*

Section 7(a) continues the requirement of existing law that BPA set its rates to recover, in total, the full cost (but not more than the full cost) of its financial obligations. This subsection also sets forth the applicable law and procedure upon which the Federal Energy Regulatory Commission shall approve and confirm BPA's periodic rate filings.

Section 7(b) contains the rate directives for power sold to meet the "general requirements" (defined in this subsection) of BPA's public body and cooperative customers and Federal agency customers, as well as power sold by BPA under the section 5(c) exchange. This will be BPA's lowest firm power rate, based on BPA's lowest cost resources. Subsection 7(b)(2) establishes a "rate ceiling" for BPA's preference customers, and specifies the method of calculating this ceiling, in order to insure such customers the cost benefits of their preference rights for sales under this subsection. Amounts not recoverable from preference customers because of this ceiling are to be recovered through supplemental rate charges for all other power sold by BPA under other provisions of section 7, as subsection 7(b)(3) specifies. Subsection 7(b)(4) defines "general requirements" as the power purchased by the relevant customers under section 5(b), exclusive of power used by the customer to serve any new large single loads (defined in section 3(13)). This provision thus affects power rates

only, not the amount of power supplied to the customer under section 5(b).

Section 7(c) contains the rate directives for direct service industrial customers. Prior to July 1, 1985, the rates of these customers shall be set to recover both the costs of serving these loads and the otherwise unrecovered net costs of the section 5(c) exchange. After July 1, 1985, such rates are to be "equitable" in relation to certain specified retail industrial rates in the region; the method of determining the "equitable" rate is set forth in detail in subsection 7(c)(2). Subsection 7(c)(3) specifies that BPA shall adjust such rates to take into account the value of power system reserves made available to BPA through its rights to interrupt or curtail service to these customers.

Section 7(d)(1) permits BPA to offer rate discounts to customers with low system densities such as rural electric cooperatives with high distribution costs resulting from sparsely populated service areas.

Section 7(d)(2) authorizes BPA to establish a special rate for a direct-service industrial customer if (1) the customer's primary resource consists of raw materials indigenous to the region, and (2) all power sold to such a customer may be interrupted, curtailed or withdrawn to meet firm loads in the region. The Committee is aware of only one direct-service industrial customer, the Hanna Nickel Mining and Smelting Company, Riddle, Oregon, which would meet the criteria of this paragraph.

Section 7(e) clarifies that BPA may continue, as it does under existing law, to charge uniform rates for the sale of electric peaking capacity. This subsection also clarifies that the rate directives contained in this bill only govern the amount of money BPA is to collect from each class of customer and not the form of the rate used to collect that sum of money. For example, time-of-day rates, seasonal

rates, rate structures designed to give BPA customers particular price signals, and other rate forms would be permissible.

Section 7(f) is the rate directives for the so-called "new resources rate" that BPA will charge customers for sales other than those to which a different rate directive applies. This rate directive applies only to firm power sales for use within the Pacific Northwest. It will be used, for example, for power sold to investor-owned utilities to meet their net requirements, and for power sold to preference customers for service to new large single loads.

Section 7(g) provides for the allocation of costs and benefits that are not otherwise allocated by other provisions of this bill or other applicable laws currently in effect.

Section 7(h) authorizes BPA to adjust power rates to include surcharges arising under section 4(f), and to allocate the revenues from any such surcharges in a manner that will achieve the conservation purposes of section 4(f). This provision specifically does not authorize BPA to collect in total more revenue than needed to meet its total costs, thus reaffirming the requirements of section 7(a).

Section 7(i) sets forth detailed procedures BPA must follow in establishing rates. In general, the procedures of this subsection parallel those followed by BPA today. However, this subsection will change these existing procedures in one respect since it contains a requirement that cross-examination must be allowed at BPA's rate hearings. This requirement is intended to eliminate the hearing officer's discretion to prohibit cross-examination altogether, not the hearing officer's ability to prevent the use of unwarranted cross-examination as a dilatory tactic. Section 7(i) also authorizes FERC to approve all of BPA's final rates on an interim basis but allows the Secretary of Energy to exercise such interim approval of such rates for appli-

cation until such time as FERC establishes procedures of its own for interim approval of BPA's final rates.

Section 7(j) requires BPA, in its power billings to its customers, to break down the costs of different resource categories and to indicate the cost of new resources in relation to the average cost of BPA resources. This will allow BPA's customers to identify, for themselves and for their ratepayers, the costs of load growth to the region.

Section 7(k) governs the method of determining BPA's rates for the sale of nonfirm electric power to other regions of the United States. Such rates shall continue to be governed by existing law, and shall become effective after review by FERC under the procedures of the Federal Power Act.

Section 7(l) authorizes BPA to establish rates for the sale of power outside the United States (i.e., to Canada), and to negotiate such rates if appropriate to insure equitable treatment in relation to the rates charged for power purchased by BPA from entities outside the United States. The purpose of this provision is to protect regional consumers from the economic penalties of selling low and buying high in dealings with Canada.

SECTION 8 — *Amendments to existing law*

Section 8(a) amends the Federal Columbia River Transmission System Act to permit BPA to use the BPA Fund to make short term power purchases to enable BPA to meet its obligations under the fish and wildlife provisions of this bill (e.g., to buy power to replace power generating capability that may be lost through a spill for fish passage purposes at a Federal dam). This is designed to reduce conflicts between fisheries agencies and BPA customers by ensuring that BPA can meet its obligations to each.

Sections 8(b) and (c) are technical amendments to the Federal Columbia River Transmission System Act needed

to permit BPA to use its self-financing ability to carry out the provisions of this bill.

Section 8(d) amends the Federal Columbia River Transmission System Act with respect to BPA's borrowing authority. Under the authority of that Act, BPA is authorized to borrow by selling bonds to the United States Treasury to finance the construction of the Pacific Northwest's high-voltage transmission system.

Paragraph (1) of this subsection amends that Act to permit BPA to utilize its existing borrowing authority in order to implement this bill, but not for the purpose of acquiring under section 6 of this bill electric power from a generating facility with a planned capability of more than 50 average megawatts, or from any smaller generating facility other than one utilizing renewable resources.

Paragraph (2) of this subsection amends that Act to specify that the interest rate Treasury charges BPA shall be the rate at which Treasury borrows plus a sufficient markup to raise the total rate to the level of similar bonds sold by other government agencies. This paragraph also requires BPA to pay a one per cent interest rate penalty on any amount that is not repaid to Treasury in a timely fashion in any given year under applicable repayment criteria. The Committee included this interest penalty provision in S. 885 so as to provide BPA with an incentive to keep its repayment obligations current. However, the Committee is aware that BPA's revenues are dependent upon streamflows in the region and that these revenues fluctuate significantly in response to fluctuations in annual streamflows. Consequently, the Committee believes it would be appropriate for BPA to include as a cost in its rates an allowance to cover the possibility of less than average water conditions so as to enable it to make the timely repayments necessary to avoid the interest rate penalty.

Paragraph (3) of this subsection amends that Act by increasing BPA's existing \$1,250,000,000 borrowing limit

by an additional \$1,250,000,000 after October 1, 1981, for the purpose of creating a special revolving account in the BPA fund for conservation and renewable resource loans and grants.

Section 8(e) is a technical provision to conform the definition of the Pacific Northwest region in the Act of August 31, 1964 (Public Law 88-552) to that used in this bill.

Section 8(f) amends the Federal Columbia River Transmission System Act to add provisions for annual impact aid payments by BPA to State and local governments. Such payments are mandated if BPA completes, after the effective date of this Act, the initial construction of BPA major transmission facilities that are exempt from State and local real property taxes although located within the jurisdiction of a State or local government to whom such payments shall be made. Such payments are discretionary in other specified circumstances. Payments are to be made under a region-wide formula that BPA establishes by rule; the formula is to be based on certain specified factors. BPA's payment to any State and local government shall not exceed the amount that BPA determines would be paid to such government if the transmission facilities were not exempt from State and local real property taxes. As with all other transmission system costs, such payments should be charged to the transmission system and equitably allocated by BPA between Federal and non-Federal uses of the transmission system (see section 7(a)(2)(C)).

The purpose of this section is to compensate State and local governments for impacts incurred as a result of transmission facilities being constructed by BPA.

SECTION 9 — *Administrative provisions*

Section 9(a) is a technical provision integrating BPA's general contracting authority under section 2(f) of the Bonneville Project Act with its contracting authority under

this bill, and therefore avoiding potential conflicts between BPA's statutes with respect to contract matters.

Section 9(b) governs the relationship of BPA and the Department of Energy, and mandates that BPA, DOE and the Council are to assure the timely implementation of this bill in a sound and businesslike manner.

Section 9(c) insures that BPA sells outside the region (both directly and indirectly) only that power which is excess to the needs of the region.

Section 9(d) serves two purposes. First, it clarifies that utilities (unlike BPA) are free to dispose of their own non-Federal power (both firm and non-firm) so long as they do not thereby increase BPA's firm power obligations. Second, the subsection requires BPA to provide available services and facilities to such utilities for such sales, and prohibits BPA from discriminating in the provision of such services against any utility or group thereof on the basis of their independent development of resources. Both parts of this subsection therefore preserve the individual and collective independence of utilities and groups of utilities, as well as reaffirming the requirement contained in section 6 of the Federal Columbia River Transmission System Act that BPA make available on a fair and non-discriminatory basis Federal transmission system capacity in excess of the capacity required for power generated or acquired by the United States.

Section 9(e) governs judicial review of final actions under this bill, and includes (i) a list of final actions, (ii) provisions with respect to scope of review and the record on review, (iii) specification of when particular actions shall be deemed to be taken, and (iv) specification of the appropriate court and the time within which suits to challenge actions or decisions under this Act may be brought.

Section 9(f) contains provisions to insure that the ability of state and local governments to engage in tax-exempt

municipal financing of power facilities is preserved but not extended, and that the regulations of the Internal Revenue Service applicable to industrial development bonds in general shall continue to apply to resources financed through tax-exempt bonds in the Pacific Northwest. Under section 5(b), BPA will be obligated to meet all the load growth requirements of requesting preference utilities from the effective date of this Act; this provision is designed to insure that utilities with tax-exempt status will be able to provide to BPA the resources necessary to meet this load growth without losing their tax-exempt status.

Section 9(g) provides that FERC shall convene a joint State board under section 209 of the Federal Power Act to assist it when it reviews rates paid by BPA to investor-owned utilities for power acquired from such utilities under sections 5(c) and 6 of this bill. This provision permits State regulatory agency participation in the review of rates that would otherwise not be subject to State jurisdiction because the relevant sales would be sale of power in interstate commerce.

Section 9(h) establishes terms and conditions for, and regulatory control over, the creation and operation of electric generating entities that may be formed in order to sell resources to BPA under this bill. This subsection provides that such generating entities do not become "electric utility companies" for purposes of the Public Utility Holding Company Act if a number of conditions are satisfied. These conditions include the review by the Securities and Exchange Commission for consistency with the policies specified in section 1(b) of that Act. These conditions are intended to preclude possible abuses which could result from unconditional exemption. The purpose of this subsection is to permit BPA to acquire resources from investor-owned utilities at the lowest obtainable power cost in order to avoid adverse impacts on the rates of BPA's other customers.

Section 9(i) sets forth additional services BPA is to provide its customers, at their request and expense, with respect to power sales and purchases of their own. This subsection essentially ratifies BPA's existing policies on services, except that paragraph (3) creates a limited and contingent priority on BPA's available services for the marketing of power from projects currently under construction in the region, should BPA decline to acquire these resources.

Section 9(j) requires the Council to prepare a report on retail rate structures that encourage cost-effective conservation and consumer-owned renewable resources and authorizes the Administrator to assist customers in analyzing and developing such rate structures.

Section 9(h) establishes within BPA an Assistant Administrator position for conservation and renewable resources.

SECTION 10 — *Savings Provisions*

Section 10(a) is a savings provision to preserve the rights of States, local governments and utilities to (1) determine retail electric rates, (2) develop and implement conservation and resources, and (3) continue to make all energy facility siting decisions.

Section 10(b) preserves the rights and obligations of all parties under existing contracts so that this bill will not be construed as abrogating any contract. It is anticipated, however, that certain contracts such as power sale contracts will be surrendered voluntarily by BPA customers who wish to obtain new contracts under this bill.

Section 10(c) expressly preserves the provisions of Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of Federally generated electric power. (The preference provisions of the Bonneville Project Act are expressly preserved in section 5(a) of this bill.)

Section 10(d) recognizes and clarifies that certain specified contracts executed pursuant to this bill shall not be affected by any subsequent judicial determination that any provision of this bill may be unconstitutional. The purpose of this provision is to permit the bill to be implemented, and contracts under the bill to be relied upon, on the schedule set forth in other provisions of the bill.

Section 10(e) preserves all treaty and other rights of Indian Tribes.

Section 10(f) relates to appropriations of water and to water rights generally. Paragraph (1) clarifies that this bill does not authorize any appropriation of water by any entity. Paragraph (2) states that in the implementation of this Act, the Federal government and its agents, permittees or licensees shall not appropriate, use, divert, dedicate, or claim water within any State except pursuant to substantive and procedural provisions of State law, regulation or rule of law. Paragraphs (3) and (4) preserve, respectively, State laws and interstate compacts governing the appropriation, use, diversion, dedication of, and claim to, water, and the rights of Indian Tribes. The intent of the latter provision is to preserve reserved rights that such tribes may possess.

Section 10(g) reaffirms the provisions of section 6(j) by making clear that BPA alone, not the United States of America or any other Federal entity, is obligated to perform any new contracts executed by BPA pursuant to this bill. Similarly, this subsection makes clear that the United States of America is not obligated to perform any contracts that may be executed by the Council.

Section 10(h) affirms the reservation under law of electric power for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State, as well as the reservation of 50

percent of the power produced at Libby Reregulating Dam, if built.

This section establishes the method of determining the effective date of this bill after it has become an Act.

Appendix F

SENATE

96th Congress—1st Session

Report—No. 96-272

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

July 30 (legislative day, June 21), 1979.

—Ordered to be printed

Mr. Jackson, from the Committee on Energy and
Natural Resources, submitted the following

REPORT

[To accompany S. 885]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 885) to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act".

FINDINGS

SECTION 2. The Congress finds that—

(a) The Federal Columbia River Power System offers a unique opportunity to encourage policies of conservation and efficiency in the use of electric power within the Pacific Northwest.

(b) The participation and consultation of the Pacific Northwest States, local communities, ratepayers, the Administrator's customers, users of the Columbia River system (including fisheries agencies), and the public at large within the region are essential in development of regional plans and programs related to energy conservation, renewable resources, other generating resources and orderly planning of the Federal Columbia River Power System.

(c) The ratepayers of the Pacific Northwest should continue to pay all costs necessary to produce, transmit, and conserve electric power to meet the region's electric power requirements, including the amortization of the Federal investment in the Federal Columbia River Power System.

DEFINITIONS

SECTION 3. As used in this Act—

(a) "Administrator" means the Administrator, Bonneville Power Administration.

(b) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production or distribution.

(c) A conservation measure or any resource is "cost-effective" if it is forecast to be available within the time it is needed and if it is forecast to meet or reduce the electric power demand of the consumer at an estimated incremental system cost no greater than that of the least-cost similarly available alternative conservation measure or resource: *Provided*, That such cost estimates shall include estimates of all direct systems costs of the conserva-

tion measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs, and such quantifiable environmental and social costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, are directly attributable to the conservation measure or resource: *Provided further*, That any conservation measure may have an estimated incremental system cost of up to 110 per centum of the least cost alternative nonconservation resource.

(d) "Council" means the Pacific Northwest Electric Power Planning Council established pursuant to this Act.

(e) "Customer" means an entity that contracts for the purchase of power from the Administrator, either for resale or for direct consumption.

(f) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(g) "Electric power" means electric peaking capacity or electric energy or both.

(h) "Federal base system resources" means the Federal Columbia River Power System hydroelectric projects, resources acquired by the Administrator under long-term contracts in force on the effective date of this Act, and resources acquired by the Administrator to replace reductions in capability of the foregoing resources.

(i) "Major resource" means a resource having a capability greater than fifty average megawatts, and, if acquired by the Administrator, is acquired for a period longer than five years.

(j) "New large industrial load" means an industrial load associated with a new industrial plant or an expansion of an existing plant or an existing industrial plant load which

is not contracted for or committed to by a public body, cooperative, or Federal agency customer prior to October 1, 1978, any of which will result in an increase in power requirements of ten average megawatts or more in any three-year period; *Provided*, That the Council may recommend to the Congress for approval a different limitation in the maximum size of such new large industrial load.

(k) "Pacific Northwest", "region", or "regional" means:

(1) the region consisting of the States of Oregon, Washington, and Idaho, the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without said region.

(l) "Plan" means the regional electric power plan prepared and adopted pursuant to this Act.

(m) "Renewable resource" means a resource which utilizes a renewable source of energy, including, but not limited to, solar, wind, hydro, geothermal, and biomass, and which is used for electric power generation or which will reduce the electric power requirements of a consumer by direct application.

(n) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator either from resources or through rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.

(o) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower of farm irrigation and pumping for any farm.

(p) "Resource" means (1) electric power, including the actual or planned electric power capability of generating facilities or (2) actual or planned load reduction resulting from direct application of a renewable energy resource, or from a conservation measure.

REGIONAL PLANNING AND PARTICIPATION

SECTION 4. (a) There is established the Pacific Northwest Electric Power Planning Council composed of five members. The Governors of the States of Idaho, Oregon, Montana, and Washington may under applicable State laws each appoint one member to the Council from their respective States. The Administrator shall serve as the fifth member of the Council.

(b) The Council shall select a chairman from among its members. Three members of the Council shall constitute a quorum for conducting business. Decisions of the Council shall be by majority vote: *Provided*, That any action to approve or amend the plan described in subsections (d) and (e) of this section, or any element thereof, must receive the votes of at least three members of the Council, including the vote of the Administrator, to be adopted. The Council shall adopt rules of procedure, including rules applicable to its public hearings.

(c) Each State's member of the Council may request Council approval of funding in support of his State's participation in the Council and activities of his State related thereto. The Administrator shall include in his annual budget submitted pursuant to Public Law 93-454 (as amended), such requests approved by the Council, not to exceed a total amount equal to 0.02 mills per kilowatt-hour

of the Administrator's estimated sales in the year the budget is to be effective. In order to assist initial State participation in the Council, the Administrator shall prepare and propose an amended annual budget as soon as practicable after the enactment of this Act to expedite payments to the States.

(d) The Council shall direct the preparation of a regional electric power plan, and shall adopt such plan within two years after the effective date of this Act. The adopted plan or any portion thereof may be amended from time to time, and shall be reviewed not less frequently than once every five years. Within one year from the effective date of this Act, and thereafter prior to each review, the Council shall identify major subject areas to be included in the plan. Public hearings shall be held in each member's State on (1) major subject areas to be addressed in the plan, and (2) the plan or amendments to the plan, proposed by the Council for adoption: *Provided*, That a public hearing shall also be held in any other State of the region on the plan, or amendments, proposed for adoption if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. The Council shall take action under this subsection pursuant to section 553 of title 5, United States Code.

The Administrator's implementation of the authorities under this Act shall be consistent, to the extent he determined feasible, with the plan: *Provided*, That the Administrator shall notify the Council of any actions not consistent with the plan together with his reasons for taking such actions: *Provided further*, That the Administrator's implementation of the authorities in sections 6 (a) through (d), (f) and (h) shall be consistent with the plan as he determines or, notwithstanding his determination, as the Council, within 60 days of his determination by majority

vote of the full Council, may determine: *Provided, however,* That if no plan is in effect or a proposed implementation of a conservation measure or an acquisition of a resource is not consistent with the plan, the Administrator may proceed to implement the conservation measure or acquire the resource pursuant to the procedures in section 6 (a) through (c).

(e) The plan shall give the following priority to resources: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat and generating resources of high fuel conversion efficiency; and fourth, to all other resources: *Provided,* That all such resources shall be cost effective and feasible:

(1) The plan shall set forth a general scheme for implementing conservation and developing resources to reduce or meet the Administrators' obligations with due consideration for environmental quality, compatibility with the existing regional power system, preservation and enhancement of fisheries, and other criteria which may be set forth in the plan.

(2) The plan shall also include, but not be limited to, model conservation standards, areas for research and development, a methodology for determining the average system cost of resources exchanged under section 5(b)(2), a methodology for determining quantifiable environmental and social costs and benefits under section 3(c), and a twenty-year demand forecast which includes regional reliability and reserve requirements.

(f) Model conservation standards for inclusion in the plan shall (1) include, but not be limited to, standards applicable to new and existing structures, utility, customer and governmental conservation programs, and other consumer actions for achieving conservation, and (2) be designed to produce all power savings that are reasonable,

feasible and cost-effective to consumers. If the Council so recommends by majority vote of the full Council, the Administrator may impose additional charges on customers for those portions of their load within the region that are within States or political subdivisions which have not, or on his customers which have not, implemented conservation measures applicable to themselves that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such model conservation standards. Such charges shall be set to recover additional costs the Administrator determines he will incur because such energy savings have not been achieved, but in no case may such charges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

(g) To insure widespread public involvement in the formulation of regional power policies, the Administrator (1) shall maintain comprehensive programs, including programs in cooperation with the Council, to inform the Pacific Northwest public of major regional power issues, to obtain public views concerning those issues, and to secure advice and consultation from the Administrator's customers and other parties; and (2) may form advisory committees as appropriate.

(h) The Council shall request annually from the region's State and Federal fisheries agencies and the appropriate Indian tribes their recommendations of measures which would contribute to the preservation and enhancement of the fish resources of the Columbia River and its tributaries for inclusion in the plan and their recommendations for the funding of research and development efforts which have the potential of providing improved passage for anadromous fish migrants at and between the region's hydroelectric dams. The Council shall consider such recommendations in the preparation of the plan or amendments to the plan. Upon the adoption of the plan or amend-

ments to the plan by the Council, the Administrator shall (1) include in his annual budget funds for fisheries research and development to be paid from the Bonneville Power Administration fund, or from appropriations, and (2) acquire and dispose of power and utilize the flexibility of the resources available to him in a manner which will assist in the preservation and enhancement of the anadromous fisheries resource while meeting his other obligations.

SALE OF POWER

SECTION 5. Subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937, Public Law 75-329 (as amended), and, in particular, sections 4 and 5 thereof, and at rates established pursuant to section 7 of this Act—

(a) Whenever requested the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under Public Law 75-329 (as amended), and to each requesting investor-owned utility, electric power to meet such customer's firm power load in the region which is in excess of the capability of such customer's firm resources which such customer had used in the year prior to enactment of this Act to serve its firm load and such other resources as such customer shall determine, pursuant to contracts under this Act, will be used to serve its firm load: *Provided*, That such resources shall continue to be so used except with the consent of the Administrator or because of obsolescence, retirement, loss of resource or loss of contract rights.

The Administrator shall include in contracts executed in accordance with this subsection provisions that enable him to restrict his obligations to meet such loads in the event he determines, after a reasonable period of experience under this Act, that he cannot be assured of acquiring sufficient resources pursuant to section 6 to meet such loads, but (1) no such restrictions shall be applicable to

the Administrator's public body and cooperative customers entitled to preference and priority under Public Law 75-329 (as amended), or to his Federal agency customers, until the Federal base system resources are fully allocated to such customers; and (2) sales to customers pursuant to this subsection shall not be restricted below the amounts of electric power, as specified in such contracts, acquired by the Administrator from or on behalf of such customer pursuant to subsection 5(b)(2) and section 6. The Administrator shall, consistent with the provisions of this Act, insure that any such restrictions pursuant to this subsection are distributed equitably throughout the region.

(b) Additionally, (1) the Administrator is authorized to sell electric power to Federal agencies in the region, and (2) whenever a Pacific Northwest utility offers to sell electric power to the Administrator at the average system cost of resources then available to that utility, the Administrator shall purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region: *Provided*, That (A) such sale shall be limited to an amount not to exceed 50 per centum of each such utility's regional residential load in the year beginning July 1, 1980, and increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985; (B) the cost benefits, as specified in contracts, of any such exchange sale which are attributable to any utility's residential load within a State shall be passed through directly to the utility's residential loads within such State: *Provided*, That a State which lies partially within and partially without the region may require that such benefits be distributed among all of the utility's residential loads in that State; (C) a utility may terminate, upon reasonable terms and conditions, its exchange purchase and sale in the event the supplemental rate charge provided for in section 7(b) is applied and the cost of

electric power sold to the utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by the utility to the Administrator under this subsection; and (D) the Administrator may acquire the electric power necessary to carry out the exchange sale from other resources, rather than purchase the electric power offered him by the utility pursuant to this subsection, if the cost of doing so is less than the cost of purchasing the electric power offered by the utility.

The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator, subject to review and approval by the Federal Energy Regulatory Commission as provided in section 9(g), on the basis of a methodology developed for this purpose. Such methodology shall be developed by the Council as part of the regional electric power plan identified in section 4, or, until such a plan has been adopted, shall be developed by the Administrator in consultation with his customers in the region and appropriate State regulatory bodies. Average system cost shall not in any event include: (i) the cost of additional resources in an amount sufficient to serve any new large industrial load of the utility that was not contracted for or committed to prior to October 1, 1978; (ii) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and (iii) any costs of a generating facility which is terminated prior to commercial operation.

(c)(1) The Administrator is authorized to sell electric power to direct service industrial customers which have contracts for the purchase of electric power from him on the effective date of this Act, so long as such sales provide a portion of the reserves for firm power loads within the region. To effectuate the purposes of this subsection the Administrator shall offer to such customers new long term contracts in accordance with section 9(c) that provide such

customers an amount of power equivalent to that to which such customers are entitled under present industrial firm contracts. The offer and execution of these initial new contracts shall be deemed to be supported by a sufficiency of electric power available to the Administrator.

(2) The Administrator shall not offer to sell amounts of electric power, including reserves, to new direct service industrial customers or to existing direct service industrial customers in addition to the amounts provided under subsection (c)(1) unless the Council has approved such sale by majority vote of the full Council and the Administrator determines that such proposed sale is consistent with the plan and that (A) additional power system reserves are required for the region's firm loads, (B) additional direct service industrial loads would provide a feasible and cost-effective method of supplying such reserves, (C) loads of similar character cannot provide equivalent operating or planning benefits of the region if served by a utility, and (D) the Administrator has or can acquire sufficient electric power to serve such loads. After such determination and approval by the Council, the Administrator is authorized to offer to new or existing direct service industrial customers an additional amount of power providing reserves in the amount determined to be necessary.

(d) The Administrator is further authorized to sell or otherwise dispose of electric power, including acquired power, that is surplus to his obligations incurred pursuant to subsections (a), (b), and (c) of this section in accordance with this and other statutes applicable to the Administrator.

CONSERVATION AND RESOURCE ACQUISITION

SECTION 6. (a) The Administrator shall, to the maximum extent practicable, implement all conservation measures he determines to be consistent with the plan. If no plan is in effect the Administrator shall implement conservation measures he determines are feasible and consistent with the

criteria of section 4(e): *Provided*, That no mandatory conservation requirements shall be set by the Administrator pursuant to this authority in the absence of a plan. Such measures may include, but are not limited to, financial assistance for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application. The Administrator may, in accordance with the provisions of this section, conduct demonstration projects to determine the feasibility of conservation measures and direct application renewable energy resources: *Provided further*, That no obligation may be incurred for any such demonstration project until such proposal is explicitly noted in the Administrator's budget submittal to the Congress pursuant to Public Law 93-454 (as amended). In addition, he shall assist conservation by and among regional consumers by (1) providing technical or financial assistance, (2) cooperating with his customers and governmental authorities to encourage maximum cost-effective voluntary conservation, and (3) aiding his customers and governmental authorities in implementing conservation standards adopted pursuant to section 4(f).

(b) The Administrator shall meet his contractual obligations that remain after taking into account planned savings from conservation measures provided in this section by acquiring additional resources (in addition to electric power acquired on a short term basis pursuant to section 11(b) (6)(i) of Public Law 93-454 (as amended)) he determines to be consistent with the plan or, if no such plan is in effect, which he determines, after compliance with section 6(c), are consistent with section 4(e). The Administrator shall acquire resources to replace Federal base system resources in accordance with the provisions of section 6 of this Act except in the case of federally constructed resources otherwise authorized by the Congress. Notwithstanding any acquisition of resources, the Administrator shall not reduce his efforts to achieve conservation savings pursuant to section 6(a).

(c)(1) In proposing to acquire any major resource, the Administrator shall give notice of the proposed action to the Council, his customers and the State in which the resource would be acquired, solicit views and relevant information, conduct a public hearing, and not less than ninety days after such notice may make a decision supported by a written statement, which statement shall include specific findings that the proposed acquisition is consistent with the plan unless such acquisition is proposed pursuant to parts (3) or (4) of this subsection.

(2) The Administrator shall submit to appropriate committees of the Congress the administrative record which shall consist of his written statement in support of any major resource acquisition decision made pursuant to this subsection together with (A) all statements, data, and other information on which the Administrator relies, including information received by him from the Council and his customers; (B) the transcript or other record (including all exhibits) of the hearing; (C) a record of all other relevant views and reactions received by him; and (D) a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act, Public Law 91-190 (as amended). The Administrator thereafter shall publish notice of his decision in the Federal Register. The Administrator may not implement any such decision or make any financial commitment for a major resource acquisition under this subsection prior to ninety days after the date of publication in the Federal Register and until it has been noted in the Administrator's budget submittal made pursuant to Public Law 93-454 (as amended); *Provided*, That in the absence of a plan or if the proposal is inconsistent with the plan, no financial commitment for a major resource acquisition shall be made until the acquisition has been specifically approved by Act of Congress.

(3) If within two years after the effective date of this Act, the Administrator proposes to acquire a major re-

source, but no plan is yet in effect, the Administrator may acquire such resource by following the procedure set forth in subsections (c) (1) and (2), except that his written statement shall include specific findings that acquisition of the resource is consistent with the criteria of subsection 4(e).

(4) If, subsequent to the adoption of a plan the Administrator wishes to be able to acquire a resource or undertake a conservation measure which he determines to be inconsistent with such plan, or in the absence of an adopted plan two years after the effective date of this Act, the Administrator may acquire a resource or undertake a conservation measure pursuant to the following procedure: (A) the Administrator shall propose to the Council a plan, or an amendment to the existing plan, with which the proposed action would be consistent, and submit a written statement to the Council that the plan or proposed amendment is needed to permit the proposed action, that the resource or conservation measure is needed to meet the Administrator's obligations, and that the resource or conservation measure is consistent with the criteria set forth in subsection 4(e); (B) the Council shall proceed with hearings in accordance with provisions of section 4(d)(2); (C) if within ninety days after the submission of the Administrator's proposal the Council has not adopted a plan or plan amendment with which, in the Administrator's determination, the proposed action is consistent, the Administrator may proceed with the action after following the procedure established under parts (1) and (2) of this subsection. For the acquisition of a resource or implementation of a conservation measure, either of which the Administrator determines to be inconsistent with the plan, public hearings shall be held pursuant to section 556 of title 5, United States Code, and the Administrator shall make a written statement in support of his decision pursuant to section 557 of title 5, United States Code.

(5) The Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest utility for ownership, participation, or other sponsorship but not in excess of the amounts needed to meet its regional load.

(d) The Administrator is authorized to acquire a resource, other than a major resource, which does not meet criteria of section 4 but which he determines is an experimental, developmental, demonstration or pilot project of a type with a potential for providing feasible, cost-effective, and reliable service to the region. The Administrator is authorized to construct such a project if it is a renewable resource and he determines that no utility or political subdivision in the Pacific Northwest is willing to construct such project at reasonable cost. The Administrator shall make no obligation for the acquisition of construction of such a resource until it has been noted in his budget submittal to the Congress pursuant to Public Law 93-454 (as amended).

(e) To the extent conservation measures or acquisition of resources require direct arrangements with consumers of electric power, the Administrator shall make maximum practicable use of his customers and other local entities capable of administering and carrying out such arrangements.

(f) For resources which the Administrator determines will be not inconsistent with the plan or for which he proposes to follow the procedures of section 6(c) (3) and (4), the Administrator is authorized to enter into agreements with sponsors of (1) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource which may be proposed for acquisition by the Administrator, or (2) any other resource, which on preliminary data he finds

would satisfy criteria of this Act, to provide for the reimbursement of the sponsor's investigation and preconstruction expenses (which expenses shall not include procurement of capital equipment or construction material for such resource) if such resource is subsequently denied State siting approval or other necessary Federal or State permits, or if such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the criteria of this Act, or is not acceptable because of environmental impacts, or after such investigation the Administrator determines not to purchase the resource and the resource is not constructed: *Provided*, That any such agreements shall provide the Administrator an option to acquire any such resource: *Provided further*, That the Administrator shall terminate his financial commitment as to any further expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after a final denial of application for State siting approval. No further commitment may be made by the Administrator until the Administrator has completed such procedures as may be required by the National Environmental Policy Act, Public Law 91-190 (as amended).

(g) At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator, shall be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h) The Administrator is authorized to grant billing credits and provide services to any of his customers for independent conservation activities undertaken by such customers or political subdivisions served by a customer and for resources constructed, completed or acquired by

a customer or political subdivision after the effective date of this Act which reduce the obligation of the Administrator to acquire resources under this Act. Any such credits which are granted for a major resource shall be granted only if such grant is determined by the Administrator to be not inconsistent with the plan or if such credits are authorized pursuant to the procedures of section 6(c)(4). The Administrator shall be required to grant credits (1) to the extent such customer or political subdivision undertakes independent conservation measures which the Administrator finds will achieve energy savings beyond the measures included in the plan, and (2) for a renewable resource or a multipurpose project uniquely suitable for such customer's or political subdivision's development. The Council may develop and propose guidelines to the Administrator to assist in the determination of the amount of such credits. The Administrator shall determine the amount of credits taking into account guidelines recommended by the Council and the risks and benefits assumed by the entity to be credited and the risks and benefits provided to the Administrator's customers: *Provided*, That any credits under this subsection shall be granted only to the extent they are cost effective.

(i) Contracts for acquisition of resources entered into pursuant to this section shall contain such terms and conditions as the Administrator finds necessary or proper to insure timely construction, scheduling, completion, and operation of new resources, to insure that the costs of any acquisition are as low as reasonably possible, consistent with sound engineering, operating, and safety practices, and to provide the means for the Administrator to exercise effective oversight, audit, and review of all aspects of such construction and operation.

(j) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

(1) acquire any electric power required by (A) any customer or group of customers to enable them to replace resources determined to serve firm load under subsection 5(a), or (B) direct service industrial customers, to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power he is himself obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting it: *Provided*, That the Administrator may prescribe policies and conditions for the independent acquisition of replacement power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisitions; and

(2) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable statutes, and with respect to direct service industrial customers, if such sale is under terms and conditions acceptable the Administrator.

The Administrator shall furnish services including transmission, storage, and loan factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost,

including a reasonable rate of return to the Administrator pursuant to this Act and such offer is not accepted within one year.

(k) All obligations incurred by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations shall not be, nor shall they be deemed to be, general obligations of the United States of America.

(l) In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

RATE DIRECTIVES

SECTION 7. (a) The Administrator shall establish and periodically modify rates for the sale and disposition of electric power and the transmission of non-Federal power. Such rates shall be set to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to law. Such rates shall be established in accordance with sections 9 and 10 of Public Law 93-454 (as amended) and the provisions of this Act, and shall become effective upon confirmation and approval by the Federal Energy Regulatory Commission on the finding that such rates (1) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable

number of years after first meeting the Administrator's other costs, (2) are based upon the Administrator's total system costs including contingencies, and (3) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.

(b) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and sold to utilities under section 5(b)(2). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply the foregoing loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates also shall recover the costs of additional electric power as needed to supply the foregoing loads, first from the electric power purchased by the Administrator under section 5(b)(2) and then from new resources: *Provided*, That after July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative and Federal agency customers, exclusive of amounts charged such customers under section 7(g) for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, shall in no event exceed in total, as determined by the Administrator, during any year plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, as estimated in accordance with the following assumptions for the same five-year period:

(1) the public body and cooperative customers' general requirements had included the direct service industrial customer loads located within or adjacent to the geographic service boundaries of such public bodies and cooperatives during the applicable period;

(2) public body, cooperative, and Federal agency customers were served in the applicable period with Federal base system resources not obligated to other parties under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in part (1) above;

(3) no purchases or sales as provided in section 5(b)(2) were made during the applicable period;

(4) all resources that would have been required to meet remaining general requirements of the public body, cooperative and Federal agency customers not met by the available Federal base system resources determined under part (2) above were resources purchased from such customers by the Administrator pursuant to section 6 or resources not committed to load pursuant to section 5(a) and were the least expensive resources owned or purchased by public bodies or cooperatives with any additional needed resources having been obtained at the average cost of all other new resources acquired by the Administrator; and

(5) the quantifiable monetary savings to public body, cooperative, and Federal agency customers resulting from actions of the Administrator under section 6 were not achieved.

Any amounts not charged to such public body, cooperative, and Federal agency customers because of this proviso shall be recovered through supplemental rate charges for all other power sold by the Administrator.

General requirements as used in this section shall be the public body, cooperative, or Federal agency customer's electric power purchased from the Administrator under section 5(a) and 5(b)(1) exclusive of any new large industrial load that was not contracted for or committed to by the customer by October 1, 1978.

(c) The rate or rates applicable to direct service industrial customers shall be established:

(1) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(b)(2), based upon his projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other classes of power sold by the Administrator; and

(2) for the period after July 1, 1985, at a level which the Administrator determines by rule to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial customers in the region (to be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates) but taking into account (A) the comparative size and character of the loads served, (B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and (C) direct and indirect overhead costs, all as related to the delivery of power to industrial customers: *Provided*, That the Administrator's rates during such period shall in no event be less than his rate in effect for the contract year ending on June 30, 1985.

The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

(d) In order to avoid adverse impacts on—

(1) retail rates of the Administrator's customers with low system densities, the Administrator is authorized to apply discounts to the rate or rates for such customers;

(2) direct service industrial customers using raw materials indigenous to the region as their primary resource, the Administrator is authorized to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region under contract provisions equivalent to those of present modified firm contracts.

(e) In establishing rate schedules of general application, the Administrator may establish a uniform rate or rates for sale of peaking capacity.

(f) Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(b)(2) and additional resources (including new resources) which, in the determination of the Administrator, are applicable to such sales.

(g) The Administrator shall allocate to power rates, as he may determine appropriate, all other costs and benefits including, but not limited to, conservation, uncontrollable events, reserves, the excess costs of experimental resources under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) Notwithstanding any other provision of this section (except the provisions of subsection (a)), the Administrator shall adjust power rates to include any additional charges arising under section 4(f), and shall allocate any revenues from such charges in a manner he determines will help achieve the purposes of section 4(f).

AMENDMENTS TO EXISTING LEGISLATION

SECTION 8. (a) Section 11(b) of Public Law 93-454 (as amended) is amended by striking the word "and" at the end of subparagraph (10), and by substituting "; and" for the period at the end of subparagraph (11) and adding a new subparagraph (12) as follows:

"(12) making such payments, as shall be required to carry out the purposes of the Pacific Northwest Electric Power Planning and Conservation Act."

(b) Public Law 93-454 (as amended) is amended by striking subsections 13(a) and (b) and substituting the following new subsections:

"SECTION 13. (a) The Administrator is authorized to issue and sell to the Secretary of the Treasury from time to time in the name of and on behalf of the Bonneville Power Administration bonds, notes, and other evidence of indebtedness (in this Act collectively referred to as 'bonds') to assist in financing the construction, acquisition, and replacement of the transmission system, to implement the Administrator's authority (including the provision of financial assistance for conservation measures and renewable resources) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, and to issue and sell bonds to refund such bonds. Such bonds shall be in such forms and denominations, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds, the useful life of the facilities for which the bonds may be issued, and financing practices of the utility industry. Refunding provisions may be prescribed by the Administrator. Such bonds shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of America of comparable maturities, plus an amount in the judgment of the

Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the market for similar bonds issued by Government corporations but not to exceed the interest rate which would be applied to such bonds if they were purchased by the Federal Financing Bank. The aggregate principal amount of any such bonds outstanding at any one time shall not exceed \$1,250,000,000 prior to October 1, 1980, and \$1,750,000,000 thereafter.

"(b) The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Administrator's net proceeds as hereinafter defined. 'Net proceeds' shall mean for the purposes of this section the remainder of the Administrator's gross receipts from all sources after first deducting trust funds and the costs listed in section 11(b) (2) through 11(b)(7), 11(b)(11) and 11(b)(12), and shall include reserve or other funds created from such receipts."

(c) Public Law 88-552 (as amended) is amended by striking subsection 1(b) and inserting a new subsection 1(b) as follows:

"(b) 'Pacific Northwest' means (1) the region consisting of the States of Oregon, Washington, and Idaho, the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin and (2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region."

ADMINISTRATIVE SECTIONS

SECTION 9. (a) In carrying out the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising

thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary.

(b) The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by Public Law 75-329, as amended, this Act and sections 302(a) (2) and (3) of Public Law 95-91. The Secretary of Energy and the Administrator shall take such steps as are necessary to (1) assure the Administrator's timely implementation of this Act and (2) enable the Administrator to operate in a sound and businesslike manner.

(c)(1) As soon as practicable after the effective date of this Act, and in no event later than nine months after the enactment of this Act, the Administrator shall, in addition to offers otherwise authorized or required in other sections of this Act, offer long-term contracts simultaneously to (A) existing public body and cooperative customers and investor-owned utilities under section 5(a); (B) Federal agencies under section 5(o)(1); (C) direct service industrial customers under section 5(c)(1); and (D) utilities under section 5(b)(2).

(2) Each customer offered a power sales contract pursuant to this subsection shall have one year from the date of offer to accept such contract. Such contract shall become effective as follows:

(A) A contract with a public body, cooperative or investor-owned utility pursuant to section 5(a) or a Federal agency pursuant to section 5(b), on the date executed by such public body, cooperative, investor-owned utility or Federal agency, unless otherwise agreed upon by the contracting parties.

(B) A contract with a utility pursuant to section 5(b)(2), on the date executed by the utility, but no

earlier than the first day of the tenth month after the effective date of this Act.

(C) A contract with a direct service industrial customer pursuant to section 5(c)(1), on the date agreed upon by the parties, but no later than the first day of the tenth month after the effective date of this Act; such contract when executed may for rate purposes be given retroactive effect to such day.

The Administrator shall be deemed to have sufficient resources for the purpose of entering into the power sales contracts specified in this subsection.

(d) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of Public Law 88-552 (as amended), for any contract for the sale, delivery or exchange of hydro-electric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest: *Provided*, That for the purposes of this subsection, "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for disposition of such capacity. The authority granted, and duties imposed upon, the Secretary of Energy by sections 5 and 7 of Public Law 88-552 (as amended), shall also apply to the Administrator in connection with resources acquired by the Administrator. The Administrator, in making any determination of the electric power requirements of a Pacific Northwest customer which is a non-Federal utility having its own generation shall exclude, in addition to hydro generated energy excluded in section 3(d) of Public Law 88-552 (as amended), any amounts of energy included in the resources of such utility for service to firm loads in the region which were disposed of by the utility outside the region if and to the extent that

as the result of such disposition the firm energy requirements of such utility and other customers on the Administrator are greater than if such energy had been or reasonably could have been conserved or otherwise retained for service to regional loads.

The Administrator may sell as a replacement therefore only that which would be surplus energy.

(e)(1) For the purposes of section 701 of title 5, United States Code, and the following: acquisition of resources, granting of credits under subsection 6(h), assistance to sponsors under subsection 6(f), sales of electric power under section 5 (a) through (c), implementation of conservation measures, adoption of the plan or amendments thereto insofar as the plan or such amendments relate to specific resource acquisition or conservation decisions, determinations of the Administrator of the Council under section 4(d), and rate determinations under section 7 shall be final actions subject to judicial review. The record upon review shall be limited to the administrative record compiled in accordance with this Act. The scope of review shall be governed by section 706 (1) and (2) (A) through (D) of title 5, United States Code, except that review of rate determinations under section 7 shall be on the basis of substantial evidence on the record. The adopted plan or portions thereof shall not be reviewable as a part of a review of a resource acquisition decision or a conservation measure implementation decision.

For purposes of this subsection, (A) resources shall be deemed to be acquired upon publication in the Federal Register of the Administrator's section 6(b) determination or section 6(c)(2) written statement; (B) conservation measures shall be deemed to be implemented upon publication in the Federal Register of the determination required of the Administrator pursuant to section 6(a); and (C) the plan or amendments thereto shall be deemed to be adopted upon adoption by the Council and publication of notice of

adoption in the Federal Register pursuant to section 4(d), or as otherwise provided for by this Act.

(2) Suits brought to challenge final actions taken pursuant to this Act, or the implementation of such final actions, whether brought pursuant to this Act or Public Law 75-329 (as amended), or Public Law 88-552 (as amended), or Public Law 93-454 (as amended), shall be commenced within ninety days of the action, or, if notice of the action is required by this Act to be published in the Federal Register, within ninety days of such notice, or be barred.

(f) For the purpose of enabling the Administrator to acquire resources from State or local governmental units at a cost no greater than the costs which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provided in section 103(a)(1) of title 26 of the United States Code shall not be affected by the Administrator's acquisition of such resources if the Administrator, prior to contracting for the acquisition, certifies to his reasonable belief, in accordance with a procedure approved by the Secretary of the Treasury, as to the persons for whom the Administrator is purchasing such resources for sale pursuant to section 5 of this Act and as to the amount for each such person, and if, based upon such certification, which shall be conclusive as to the facts stated therein, the Secretary of the Treasury determines that less than a major portion thereof is to be furnished to persons who are not exempt persons as defined in section 103(b) of such title.

(g) When reviewing rates for the sale of power to the Administrator by an investor-owned utility under sections 5(b)(2) and 6, the Federal Energy Regulatory Commission shall convene a joint State board pursuant to section 209 of the Federal Power Act (16 U.S.C. 824h), and shall

invest such board with such duties and authority as will assist the Commission in its review of such rates.

(h) No "company" (as defined in section 79b(a)(2) of title 15, United States Code), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as defined in section 79b(a)(3) of title 15, United States Code), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code: *Provided*, That the Administrator shall have approved the organization of such "company" and all material contracts entered into by and between such "company" and any sponsor company: *Provided further*, That (1) participation in any facilities of such "company" shall have been offered to public bodies and cooperatives in the region pursuant to subsection 6(c)(5), and (2) the Administrator shall include in any contract for the purchase of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource. This subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission determines that the "company" no longer operates in accordance with this subsection, and notifies the "company" in writing of such determination, in which event this subsection shall cease to apply to such "company" thirty days after receipt of such notification.

SAVINGS PROVISIONS; WAIVERS OF PREEMPTION

SECTION 10. (a) Nothing in this Act shall alter, diminish, or abridge the right of any State or political subdivision thereof to (1) determine retail electric rates except as provided by section 5(b)(2); (2) develop and implement

its own plans and programs for the conservation, development and use of electric power resources or facilities; or (3) make energy facility siting decisions including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) Nothing in this Act shall alter, diminish, or abridge the authorities or obligations of the Administrator granted by or arising under any other applicable statute, unless otherwise specifically provided herein.

(c) Nothing in this Act shall alter, diminish, or abridge the rights and obligations of the Administrator or any other party under any contract or agreement existing as of the effective date of this Act.

(d) Nothing in this Act shall alter, diminish, abridge or otherwise affect the provisions of other Federal statutes by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

(e) Nothing in this Act shall alter, diminish, or abridge the authority of the Administrator to meet with his customers or with other groups or individuals in order to discuss regional power issues or other matters of interest or concern.

(f) Nothing in this Act shall (1) affect the jurisdiction of the States and the United States over waters of any stream or over any ground water resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States, or (3) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

(g) The reservation under law of electric power for use in the State of Montana by reason of the construction of

Hungry Horse and Libby Dams and Reservoirs within that State, plus 50 per centum of any electric power produced at Libby Reregulating Dam when built, is hereby affirmed. Electric power so reserved shall be sold at the rate or rates set pursuant to section 7.

PURPOSE

S. 885 has several major elements:

- To establish a procedure for the Bonneville Power Administration to participate with regional entities in a public planning process to coordinate the provision of electric power resources to meet the needs of the region.
- To extend the benefits of the Federal Columbia River Power System to the residential and farming consumers of investor-owned utilities.
- To supplement the authority of the Bonneville Power Administration to utilize regional power revenues to assist in the financing of future conservation measures and electric power supply resources development in the region.

SUMMARY OF MAJOR PROVISIONS

As amended, S. 885 addresses several major issues related to power problems in the Pacific Northwest, and in some instances would mandate significant departures from past or present practice. Major issues and related provisions of the bill are briefly described as follows:

PUBLIC PARTICIPATION AND CONTROL

Section 4 establishes a Pacific Northwest Electric Power Planning Council to consist of the Administrator of the Bonneville Power Administration and four appointees of the Governors of the States in the region. Using the procedures of the Administrative Procedures Act, the Council is to prepare and adopt a regional electric power plan that will govern most regional conservation efforts and re-

source acquisitions of the Administrator. The composition, duties and functions of the Council and other public participation provisions are primarily contained in section 4.

PREFERENCE

The preamble of section 5 makes all Bonneville power sales subject to the preference and priority provisions of the existing Bonneville Project Act. Public bodies and cooperatives entitled to preference and priority under that Act may not be subjected to restriction on the amount of power sold them unless and until their loads exceed the amount of Federal base system resources. Section 7(b) provides that rates charged such public bodies and cooperatives may not exceed a limit designed to reflect the power costs such public bodies and cooperatives would have experienced in the absence of this legislation. Section 10(d) preserves the general preference and priority to which public bodies and cooperatives are entitled under other statutes governing the sale of power from federally-owned generating facilities.

ALLOCATION

Sections 5 and 7 contain most provisions related to allocation of the Administrator's existing and newly acquired power and related power costs. Public bodies and cooperatives entitled to preference and priority under the existing Bonneville Project Act are to receive new requirements contracts that provide power at the Administrator's lowest rate (except power needed to serve new large industrial loads). Investor-owned utilities are to receive requirements contracts that provide power at a new resources rate, and are permitted to exchange with the Administrator an amount of power sufficient to serve their residential and small farm loads. The latter power will also be sold at the Administrator's lowest rate, with the cost benefits of the exchange required to be passed through directly to the residential and farm consumers involved. Direct-service

industrial customers of the Administrator may surrender existing contracts providing low-cost power in order to receive new long-term contracts, but at substantially higher rates. Such higher rates are to recover to the Administrator his additional costs incurred in making the power exchange with the investor-owned utilities.

ACQUISITION OF RESOURCES

Section 6 grants new authority to the Administrator to acquire resources, including conservation, to meet the loads of his customers. This authority is granted subject to the requirement that the Administrator make such acquisitions subject to the plan developed by the Council in section 4. In the absence of a regional electric power plan or if a proposed resource acquisition is inconsistent with the plan a special procedure, including specific approval of a major resource acquisition by Act of Congress, is provided.

CONSERVATION AND RENEWABLE RESOURCES

Section 4 and 6 require conservation to be treated as the region's first priority resource, and renewable resources to be treated as the second priority resource, ahead of all other resource types. Sections 4 (e) and (f) require model conservation standards to be adopted as part of the Council's regional plan. Savings from such standard are to be assured by rate surcharges, if recommended by the Council, of up to 50 percent in the event of nonattainment of expected load reductions.

The Administrator is required under sections 4 and 6 to rely upon conservation to the maximum extent it is feasible and cost effective, to provide financial assistance for conservation and renewable resource purposes, and to continue conservation efforts even if he possesses an adequate supply of power. The existing Bonneville Power Administration borrowing authority is increased by \$500,000,000 under section 8(a) to aid in the initial fund-

ing, after fiscal year 1980, of conservation and renewable resource efforts, as well as other resource activities. Conservation measures, which are treated as a resource, are to be compared with other resources available for acquisition. Conservation resources are to be considered cost-effective under section 3(c) if their life-cycle incremental system costs are less than or equal to 110 percent of the life-cycle incremental system costs of alternative nonconservation resources. The Administrator is required under section 6(h) to grant rate credits to utilities or local governments for conservation efforts that will achieve extra savings, and for renewable resources or multipurpose projects which reduce demand on the Administrator and allow the Administrator to avoid acquiring other resources.

OTHER POWER RESOURCES

Sections 4 and 6 require conventional fueled generating resources, including coal and nuclear, to be treated as the region's lowest priority resources. Section 6(c) sets forth a detailed procedure for the acquisition of any major resource and for acquisitions which are either inconsistent with the regional plan or which are made when a regional plan is not yet adopted; specific approval by Congress is required if no plan is in effect or the proposed acquisition is inconsistent with the plan. Section 6(h) prohibits rate credits being granted to utilities for major resources unless such credits are not inconsistent with the plan or Congressional approval is obtained. The cost-effective determination under section 3(c) would consider all costs associated with conventional resources, including the applicable waste disposal costs, end-of-cycle costs, and fuel costs, among other costs.

FINANCING PROVISIONS

In section 2(c), Congress finds that Northwest ratepayers should continue to pay all costs necessary to meet the region's electric power requirements, including repayment

with interest of the Federal investment in the Federal Columbia River Power System. Section 6(k) prohibits Federal "guarantees" of new investments and requires that all obligations of the Administrator incurred under this act be secured solely by his revenues from the sale of power and other services. This provision makes explicit in this act the self-financing requirement of the Federal Columbia River Transmission System Act of 1974, Public Law 93-454 (as amended). Section 8(a) increases Bonneville's present borrowing limit from \$1.25 billion to \$1.75 billion. Section 9(f) preserves the tax-exempt status of obligations issued by State and local governments to finance resources that may be acquired by the Administrator primarily for the needs of such entities.

BACKGROUND

The Bonneville Power Act of 1937 (Act of August 1937, 50 Stat. 731), authorizing the construction of the Bonneville Dam by the Corps of Engineers, provided that the electric power generated at the dam should be marketed by a Bonneville Power Administrator to be appointed by the Secretary of the Interior. The Administrator was authorized to construct, operate, and maintain transmission lines necessary to market the power. The Administrator was not authorized to construct or operate either hydro or thermal electric generating facilities.

The Bonneville Power Administration, through subsequent legislation and interpretation of the Act, has become a major part of the electric power system in the Pacific Northwest. The Federal Columbia River Power System, for which BPA is the marketing agency, had 30 hydroelectric power projects in operation in 1978, with a total generating capacity of 16,441 megawatts. In that year, the system (including federally acquired thermal) generation represented 54 percent of the region's total electric generation. The BPA transmission system includes 12,454 cir-

cuit miles with an additional 1,652 miles in various stages of design and construction. The BPA transmission system, containing 80 percent of the region's primary transmission system, forms the backbone for what constitutes a regional grid.

Traditionally, the Pacific Northwest's power needs have been satisfied by the energy produced by large hydroelectric projects. For the most part, the projects were constructed and operated by the Federal Government with the power marketed through the Bonneville Power Administration. However, some of the larger utilities built and operated their own generating facilities and purchased part of their regional power needs from BPA. In the late 1960's projections of future regional power needs by the Bonneville Power Administration indicated that by the mid-1970's, regional loads would exceed system capacity. As a result, in 1969 the "Hydrothermal Power Program" was initiated in the region in an effort to provide an orderly transition from a hydro based system to one using a blend of hydro and thermal resources. By 1970, rising costs associated with thermal plant construction and BPA's inability to acquire thermally generated resources indicated that an alternate to the Hydrothermal Power Programs would be needed if future regional needs were to be met.

By 1973, BPA stopped selling firm low-cost hydro power to investor-owned utilities because of inadequate supplies and the utilities turned to higher cost thermal power. Public utilities also realized that they too faced problems in meeting future demands when in 1976 the BPA issued notices of insufficiency to all public utilities and direct service customers, stating that BPA would not be able to meet new load requirements after 1983. Concern for future sources of electric power lead public and private utilities, industries, and customers to seek legislative assistance from the Congress.

NEED FOR THE LEGISLATION

As reported, S. 885 addresses problems associated with the future of electrical energy production and consumption in the Pacific Northwest as identified by interested regional entities. Critical in the problems facing the Northwest are the needs to initiate and carryout a comprehensive regional electric energy conservation program, to extend to residential and rural consumers the benefits of the Federal Columbia River Power System, and to assure future electric supplies for consumers at reasonable rates. Paramount in achieving these goals is the establishment of a mechanism providing for an effective region-wide planning process. S. 885 mandates the preparation of a regional electric energy plan and assures that such a plan will reflect and be responsive to the diverse interests represented in the region.

Traditionally, utility planning in the Pacific Northwest has been geographically fragmented. While in other parts of the Nation large areas may be served by a single utility which generates and distributes electric energy on an area-wide basis, the Pacific Northwest has been served by a myriad of small- to medium-sized utilities, which, for the most part, have relied upon the generation and transmission resources of the Federal Columbia River Power System. In spite of this fragmentation, the FCRP, the Bonneville Power Administration, and the distinct needs and resources of the region have served to facilitate a high degree of cooperation between utilities in forecasting regional power requirements and the integration of available resources. However, seriously lacking in the region is a comprehensive planning process providing for the integration of new generating facilities on a regional basis and a lack of opportunity for State and public participation at an early stage in the planning process. The regional electric energy plan which would be prepared pursuant to the

Pacific Northwest Electric Power Supply and Conservation Act is conditioned upon these, and other premises.

Without the planning framework and authorities contained in S. 885, the region faces potentially damaging power shortages, an inability to involve on a formalized basis the States and various interest groups in the region in the planning process, and a lack of direction for and financing of a truly regionwide conservation plan which would not only benefit the individual consumers in the area, but could serve as a model for the rest of the Nation as well.

LEGISLATIVE HISTORY

In the 95th Congress, on September 9, 1977, S. 2080, the Pacific Northwest Electric Power Supply and Conservation Act was introduced by Senator Jackson at the request of a group of utilities and industrial users of electric power in the Pacific Northwest. S. 2080 and other various other power planning proposals were the subject of extensive regional discussion and debate, and in April and May of 1978, the Senate Committee on Energy and Natural Resources conducted 4 days of field hearings in the Pacific Northwest on the regional power issue. As evidenced by the record, S. 2080 did not represent a consensus of all interested groups in the region. A redraft of the measures, which recognized many of the concerns expressed in the region, was prepared and was introduced on August 16, 1978, as S. 3418, by Senators Jackson, Magnuson, Church, Hatfield, Packwood and McClure. Hearings on S. 3418 by the Committee on Energy and Natural Resources were held in Washington, D.C. on August 24 and 25, 1978. The 95th Congress adjourned prior to completion of consideration by the Committee of S. 3418.

On April 5, 1979, S. 885 (identical to S. 3418 of the 95th Congress) was introduced by Senators Jackson, Magnuson, Church, Hatfield, McClure and Packwood. Hearings on

S. 885 were held in Washington, D.C. on May 23 and 24, 1979, before the Committee on Energy and Natural Resources. On July 18 and July 27 the measure was considered by the full Committee and was ordered reported with an amendment in the nature of a substitute on July 27, 1979.

Related legislation is presently pending before the House Committee on Interior and Insular Affairs.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 27, 1979, by majority vote of a quorum present, recommended that the Senate pass S. 885, if amended as described herein.

The roll call vote on reporting the measure was 14 yeas, 0 nays as follows:

YEAS

NAYS

Jackson
Church
Johnston
Bumpers
Ford*
Durkin
Metzenbaum
Matsunaga*
Melcher
Tsongas
Bradley
Hatfield
McClure
Domenici
Stevens

*Indicates vote by proxy

SECTION-BY-SECTION ANALYSIS COMMITTEE AMENDMENT

The Committee struck all after the enacting clause of S. 885 and inserted a substitute text in lieu thereof.

Among the changes the Committee substitute makes are the following:

- Definitions of "Council", "customer", "direct service industrial customer", "major resource", "new large industrial load", "plan", and "reserves" are provided in section 3.
- The definition of "cost effective" is substantially expanded in section 3.
- A Pacific Northwest Electric Power Planning Council is established in Section 4 in place of the Bonneville Consumers' Council and Bonneville Utilities' Council of S. 885, as introduced. The Planning Council, consisting of four representatives of the Governors of the States of the region and the Bonneville Power Administrator, is authorized to direct preparation of a regional power plan, among the components of which will be a 20-year load forecast, a scheme for resource acquisitions by the Administrator to meet such loads, and model conservation standards to set the norm for the region in achieving load reductions which will be the priority power-related resource. Public involvement in plan development through regional hearings is mandated.
- The involvement of State and Federal fisheries agencies and affected Indian tribes in plan preparation is provided for in section 4.
- Specific references to the preference and priority provisions of the Bonneville Project Act for the benefit of public bodies and cooperatives are made in section 5 so as to apply clearly to all power sales of the Administrator from the Federal base system.

- Conditions of the power exchange between Bonneville and the investor owned utilities for the purpose of serving their residential and farm loads are spelled out in section 5, and the components of the IOU average system cost of power sold to BPA under this exchange are limited.
- A limitation on Bonneville serving new direct service industries is provided in section 5.
- Specific procedures for the acquisition of major resources by the Administrator are provided in section 6. Assurance is also provided that all utilities in the region will have reasonable opportunity to participate in sponsorship of new resources to meet their loads.
- The Administrator is authorized or directed in section 6 to grant billing credits under certain conditions for resources, pursued by utilities and political subdivisions, that he does not acquire.
- Oversight requirements of the Administrator in matters pertaining to development of resources he has committed himself to acquire are enumerated in section 6.
- The securing of the Administrator's obligations is limited in section 6 to the extent of his revenues from power sales and other services he performs.
- A rate test is provided in section 7 to insure that the Administrator's power rates for public bodies and co-operatives entitled to preference and priority under the Bonneville Project Act or no greater than would occur in the absence of the regional program established in S. 885.
- The Administrator is authorized in section 7 to offer one of his direct service industrial customers a special rate, if that customer—the Hanna nickle plant in Riddle, Oregon—accepts a contract in which its entire

power supply is interruptible, as is the case under its present contract, and would not be the case under new DSI contracts otherwise anticipated under this act. He is also authorized to establish special rates for utilities with low system densities.

- The anti-trust exemption provided for the operation of the Utilities' Council in section 9 of S. 885, as introduced, is struck.
- Provisions governing judicial review appear in Section 9.
- A joint state-FERC board is provided for in Section 9 to review rates for sales of power to the Administrator.
- A series of savings clauses is provided in Section 10 to preserve State siting and utility rate regulation authority, BPA authorities under other acts, rights of parties with present contracts with the Administrator, preference and priority for public bodies and cooperatives under all federal statutes where it is provided, the Administrator's authority to meet with his customers or other groups or individuals, the jurisdiction of the states and the United States over stream waters and ground waters, and the Hungry Horse power reservation for Montana.

SECTION-BY-SECTION ANALYSIS

Section 1.—Self-explanatory.

Section 2(a).—Self-explanatory.

Section 2(b).—This subsection lists entities and individuals whose participation and consultation Congress finds to be essential in the development of a regional power plan and programs related to it. The "fisheries agencies" mentioned here are intended to include Federal and State agencies and appropriate Indian tribes to the extent that they have particular responsibility for anadromous fisheries of the Columbia River and its tributaries. It is intended that

all States in the Pacific Northwest should be consulted in the planning process, including those States which are only partially within the region as defined in paragraph 3(k) (1).

Section 2(c).—Self-explanatory.

Section 3(a).—Self-explanatory.

Section 3(b).—The term "conservation" is defined as any reduction in electric power consumption that results from increased efficiency of energy use, production or distribution. This definition is intended to distinguish "conservation", as the term is used in this act, from curtailments of power consumption that do not involve long-term reductions in demand or increased efficiency, and from renewable resources (e.g., solar panel water heating systems) that reduce consumption through direct application.

Section 3(c).—The term "cost effective" is defined to enable cost comparisons among and between alternative conservation measures and resources. A "cost-effective" conservation measure, or any resource, must be forecast to be available for and during the period when it is needed. Cost comparisons of conservation measures and resources are to be made on the basis of their estimated incremental system cost on a per-unit basis for the amount of power produced or conserved. The section provides that a conservation measure or resource is "cost effective" for purposes of the act if its estimated incremental system cost, determined in accordance with this section, is no greater than that of the least-cost alternative conservation measure or resource that is similarly available. The proviso is designed to insure that all direct system costs are included in this comparison, and that such costs are estimated for the full life-cycle of the compared conservation measures and resources. The Council is directed to develop a methodology for determining what quantifiable environ-

mental and social costs and benefits are directly attributable to a conservation measure or resource, and this section directs the Administrator to use that methodology in determining which such costs and benefits to include in the cost of effectiveness comparisons. The further proviso of this section is designed to permit a conservation measure to be determined to be "cost effective" even if its estimated incremental system cost is up to 10 percent greater than that of the least-cost, similarly available, nonconservation resource.

Section 3(d).—Self-explanatory.

Section 3(e).—This definition distinguishes "customers"—those with contracts to purchase power from the Administrator—from consumers who buy power from a utility or other similar entity. In general, the distinction is between wholesale and retail purchasers.

Section 3(f).—A list is included in Appendix A of direct service industrial customers which the Committee intends shall be offered long-term contracts pursuant to paragraphs 5(c)(1) and 9(c)(2).

Section 3(g).—The term "electric power" is defined using a standard, utility definition.

Section 3(h).—The term "Federal base system resources" is defined to include three components. First are the Federal Columbia River Power System hydroelectric projects, both existing and future. Second are resources acquired by the Administrator under long-term contracts in force on the effective date of this act, a category including the net-billed thermal plants, other specific generating resources and electric power the Administrator is entitled to receive from the utilities within and outside the region in exchange for services or other consideration. Third are resources acquired to replace reductions in the capability of resources in the first two categories.

Section 3(i).—Self-explanatory.

Section 3(j).—The term “new large industrial load” is defined in terms of load type and load size. Industrial load types to which the definition applies are those of (1) a new plant, (2) an expansion of an existing plant, which includes any type of load increase, and (3) an existing plant load served by a public body, cooperative or Federal agency customer contracted for or committed to on or after October 1, 1978. The foregoing loads are to be considered “new large industrial loads” if they result in an increase in load in excess of 10 average megawatts during any 3-year period. Additionally the Council may recommend to the Congress a different limit which would become effective only upon an act of Congress.

Section 3(k).—The term “Pacific Northwest”, and the terms “region” or “regional” are defined for the purposes of this act. A corresponding amendment to conform the definition included in Public Law 88-552 is provided in section 8(c) of this act.

Section 3(l).—Self-explanatory.

Section 3(m).—The term “renewable resource” is defined to include but is not limited to the utilization of solar, wind, hydro, geothermal, and biomass energy sources. A renewable resource could be utilized by direct application to reduce or displace an electric power load which the Administrator would otherwise be obligated to serve. Alternatively, a renewable resource could be used to generate electric power. Geothermal energy, while not always technically renewable, is included as a renewable source of energy by this section.

Section 3(n).—The term “reserves” is defined as electric power needed to avert particular planning or operating shortages, for the benefit of firm power customers, and available to the Administrator from specifically identified resources or rights. In this section, the term “firm power

customers of the Administrator" is intended to mean the firm power loads of such customers. It is not intended that the Administrator's reserves will be used to protect other than firm loads.

Section 3(o).—The terms "residential use" and "residential load" are defined in terms of "usual" residential, apartment, seasonal dwelling and farm electrical loads or uses. The word "usual" is intended to exclude loads or uses more properly considered commercial or industrial in nature, such as process loads. Only the first 400 horsepower of the irrigation or pumping load of any single farm is to be treated as a "residential use" or "residential load."

Section 3(p).—The term "resource" is defined to include the actual or planned capability of generating facilities, or the actual or planned load reduction resulting from direct application of a renewable energy resource, or from a conservation measure. While the phrase "actual or planned capability" is meant to include the planned output of a generating facility, whether or not operating or operable in whole or in part, and the planned load reduction of direct-application renewable resources or conservation measures, whether or not such resources or measures ultimately meet expectations, it is not intended that the Administrator be authorized to acquire any resource which he knows at the time of acquisition will not operate, or will not reduce load, as the case may be.

Section 4(a).—This section establishes a five member Pacific Northwest Electric Power Planning Council. Appointments by the Governors are to be made under applicable State laws, including in particular any existing or future state law dealing with confirmation of gubernatorial nominees by State legislatures.

Section 4(b).—This section establishes procedures for Council decisionmaking. Adoption of the regional electric power plan or an amendment to the plan requires the affir-

mative vote of the Administrator and at least two other members.

Section 4(c).—It is intended that funding under this section will be applied to meet expenses directly connected with each state's and its representative's participation in and support of the Council activities. Such funding must be approved by the Council, although the Administrator's vote is not required for approval, and shall be included in the Administrator's annual budget submitted pursuant to Public Law 93-454. The limit on the total of such funding for all States is established at 0.02 mills per kilowatt-hour of estimated power sales of the Administrator; it is intended that such sales figures will be based on the Administrator's estimate of his total firm loads.

Section 4(d).—This section sets forth the procedures for, and content of, the regional electric energy plan and its adoption, as well as the plan's relationship to the activities of the Administrator. The Council is to direct preparation of the plan, and to adopt a plan within 2 years of the effective date of this act; it is intended that the Administrator fully utilize his expertise and staff to assist the Council in this effort and in any subsequent effort to amend the plan. The Council is to identify promptly the major subject areas of the first plan and commence regional hearings. A second set of hearings, on the proposed plan, is to be held prior to Council action to adopt a final plan. The Council is to conduct a review of the plan no less frequently than once every 5 years. Such review should commence again with regional hearings on the major subjects of the plan and conclude with hearings on a proposed new plan and adoption of a new plan. Amendments to the plan may be made from time to time and are not to be considered a review of the plan unless the process set forth for the periodic review is followed. Public hearings are required in each of the four States represented on the Council, and in other States within the region (i.e., Wyoming, Nevada or Utah) if such States are

probable sites of major resources for acquisition in accordance with a plan or plan amendment. The hearings shall be conducted in accordance with section 553 of title 5, United States Code.

The second paragraph of this section sets forth the role of the plan in guiding the actions of the Administrator, and specifies the procedures the Administrator shall follow if no plan is in effect or if a proposed implementation of a conservation measure or acquisition of a resource is not consistent with the plan. The Administrator is to follow the direction and intent of the plan in implementing the new authorities granted him under this act, to the maximum extent feasible. He is to notify the Council promptly of any actions not consistent with the plan, and provide the Council his justification for such actions; this mandatory obligation is intended to supplement the intended regular communication between the Administrator and other members of the Council. A majority vote of the full Council may independently determine whether an action of the Administrator under sections 6(a) through (d), (f) or (h) is consistent with the plan if the Council so determines within 60 days of the Administrator's determination of consistency, and the Council's determination shall control.

A proposed implementation of a conservation measure or acquisition of a resource may be undertaken by the Administrator in the absence of a plan or despite a determination of inconsistency with the plan only under the procedures set forth in sections 6(a) through (c).

The Committee recognizes the administrative difficulties which would be involved if the plan became a highly detailed operational document. It is intended that the plan will not be a highly detailed operational document but instead will be a broad policy document which addresses major issues involved in planning and development of resources including conservation.

Section 4(e).—This section sets forth the conservation and resource priorities to be used in the plan, and lists the elements of the plan.

The elements of the plan are specified in section 4(e) (1) and (2), along with considerations that should guide the Council's development of the plan. A general scheme for implementing conservation and developing resources, as well as more specific items such as model conservation standards, a 20-year load forecast, and a methodology for determining average system cost for resources exchanged under section 5(b)(2) are among the most significant required features of the plan. The plan is not intended, however, to inhibit the Administrator's ability to act in a businesslike and timely manner to carry out the purposes of this act and other applicable statutes.

Section 4(f).—This section governs the model conservation standards to be included in the plan. It is intended that the Council promulgate the standards with technical assistance from the Administrator. The standards are to include those applicable to (1) structures, (2) conservation programs of customers, local governments and others, and (3) other consumer actions for achieving conservation. The standards are to be designed to produce all power savings that are "reasonable, feasible and cost-effective to consumers"; the term "cost-effective to consumers" is intended to mean that the cost of complying with the standards, adjusted to take into account cost savings made possible by conservation financial assistance programs, should not exceed, for the individual or entity to which the standards apply, the direct financial savings produced by compliance.

Upon the recommendation of the Council by majority vote of the full Council the Administrator may, to the extent recommended by the Council, impose the specified rate surcharges either for failure to adopt the standards, or for failure in lieu of such adoption to achieve equivalent conservation savings through other means. It is not intended that the Administrator investigate or monitor the conserva-

tion activities or compliance with conservation standards of individual performance of his customers and of political subdivisions within the region, when the Council has recommended implementation of the standards.

Section 4(g).—This section mandates widespread public involvement and public participation programs to be carried out in the region by the Administrator, including programs in cooperation with the Council. It is not intended that these programs be duplicative of the public involvement and participation procedures to be followed prior to adoption of the plan or a plan amendment. Each State is encouraged to establish public involvement and participation programs, including advisory committees, of its own to assist the State's representative in performing Council duties. This section also authorizes the Administrator to form advisory committees as he deems appropriate; such committees would be subject to the Federal Advisory Committee Act, but it is not intended that that act apply to or interfere with the Administrator's normal meetings and contacts with customers, groups of customers, or other individuals or groups within or without the region.

Section 4(h).—This section formalizes the procedure for insuring that the recommendation of fisheries agencies and appropriate Indian tribes are taken into account in the development of the regional plan and plan amendments. The section requires the Administrator, after a plan has been adopted or amended which includes such measures to (1) include funds for fisheries research and development in his annual budget to be acquired from the Bonneville Power Administration Fund or from appropriations, and (2) acquire and dispose of power, and utilize the flexibility of the resources available to him, in a manner that will assist in the preservation of the anadromous fisheries resources while meeting his other obligations.

It is intended that the recommendations of the fisheries agencies and Indian tribes deal with matters within the

practical capabilities of the Administrator and the Council. Any activities funding provided by this authority are not intended to be substitutes for the usual State and Federal fisheries programs.

SECTION 5

The preamble to section 5 is one of several savings provisions which appear in the bill to preserve the "preference clause" of the Bonneville Project Act. The Committee is aware of no inconsistency between the provisions and intent of this Act and the existing preference clause of the Bonneville Project Act. The Committee is aware of no consistency between the provisions and extent of this Act and the existing preference clause of the Bonneville Project Act. This Act and the "preference clause are expected to operate in a mutually compatible manner.

Section 5(a).—This section governs power sales to public bodies and cooperatives entitled to preference and priority under the Bonneville Project Act, and to investor-owned utilities. The term "public body and cooperative entitled to preference and priority" under that act is used here to avoid any change in determining the entities entitled to preference and priority under the Bonneville Project Act.

The Committee decided against requiring a single comprehensive definition by statute or regulation of "firm power load" and "firm resources" because the complexity of the terms would make such a definition extremely lengthy and unnecessarily inflexible. The Committee does, however, intend that for the purposes of this act there should be consistency in the application of these terms in contracts so that the Administrator's customers will be equitably treated.

The section sets forth the manner in which the firm resources of individual customers is to be determined. For purposes of that determination, the term "firm power load"

is intended to mean the power the customer is obligated to make continuously available to its purchasers (subject to the effect of any *force majeure* or uncontrollable events clauses), and the term "firm resources" is intended to mean the electric power suitable for providing service to firm power loads. These terms are used commonly by and among the Administrator and his customers and have been included and defined in the Administrator's contracts, and are intended to be incorporated in new contracts offered under this act.

Consistent with the provisions of this act, restrictions on sales imposed in the event of a planning insufficiency are to be equitably distributed throughout the region. A determination to restrict sales shall not be made until the provisions of the act are given an opportunity to function in the manner contemplated. The Committee recognizes that various classes and categories of customers have different rights to power. For example, preference customers have certain rights to the Federal base system resources, and all utilities have certain rights to what they contribute to the regional system through exchange sales under section 5(b)(2) and sales of resources to the Administrator pursuant to section 6. The Committee intends that utilities be able to plan dependably for their power supply and, recognizing the differing rights of various classes and categories of customers, that the criteria applicable to such customers be consistently applied throughout the region. It is expected that the Administrator will give customers reasonable notice of a restriction on his obligation to meet existing requirements and increases in their projected requirements. It is expected that the Administrator will include provisions in contracts tendered pursuant to this act which may be necessary to carry out these purposes.

Section 5(b)(1).—This section permits the Administrator to sell power to Federal agencies in the region, as he does under present law.

Section 5(b)(2).—This section governs the exchange power sales between the Administrator and the utilities, and the determination of the costs of such power sold by the utilities. In the four-part proviso, part (C) permits a utility to terminate such exchange sales under specified circumstances. It is intended that the Administrator include in contracts implementing this section provisions governing termination and resumption of any previously-terminated exchange, for the purpose of minimizing disruption of the Administrator's rate-making or power marketing programs or planning.

The Committee adopted an amendment to make it clear that the Administrator must offer to enter into exchange power sales under Section 5(b)(2) whenever a Pacific Northwest utility makes an offer to sell power to the Administrator which meets the criteria of that subsection. Subpart (D) of the proviso in Section 5(b)(2) allows the Administrator to carry out the exchange power sales by purchasing power other than that offered by the exchanging utility if it is available at lower cost.

The paragraph following the proviso contains a list of costs to be excluded in the determination of "average system cost"; additional exclusions may be incorporated in the methodology for determining average system cost under this section.

Average system cost as used in section 5(b)(2) does not include, among other costs, "the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act." If a utility acquires a resource in part to serve a load in the region and in part to serve an additional load outside the region the costs of that portion of the resource used to serve a regional load would be included in average system cost but the portion used to serve the additional load outside the region could not be included. The Administrator is required to determine "average system cost" on the basis

of a methodology developed by the Council as part of the regional electric power plan. The Administrator is required to develop an interim methodology for determination of average system cost prior to the adoption of the plan.

To assure that the full cost benefit of the exchange power sales authorized by section 5(b)(2) are passed on to residential ratepayers in the region the Committee adopted a provision making a pass through an explicit condition of such sales. Where a utility service area within one State is partially within and partially without the region the quantity of power marketed through section 5(b)(2) is limited by existing law reaffirmed in this act to an entitlement based on residential loads within the regional BPA service area. In such cases, to avoid conflict with State ratemaking authority the Committee adopted a proposal to permit a State regulatory body to require that exchange power sale benefits be distributed among all of such utility's residential loads in that State. In the absence of this provision the mandatory pass through would have conflicted with Montana State law which expressly bars rate discrimination based on geography. This provision is consistent with the existing law and policy with respect to BPA sales to regional investor owned utilities and it assures that both the regional river basin marketing policy and State ratemaking laws are preserved.

Section 5(c)(1).—This section governs power sales to direct-service industries which have contracts on the effective date of this act (see list in Appendix A). The amount of power to which such customers are entitled under present industrial firm contracts includes contingent allowances, made available at the discretion of the Administrator, for technological improvement purposes other than plant expansion. The terms and conditions under which such allowances may be provided are intended to be specified in contracts, and the allowances are intended to be available throughout the term of the new contracts.

The power quality provided the direct-service industries is determined by the reserve obligations set forth in their contracts in order to protect service to firm loads of the Administrator. It is intended that these contracts at least provide peaking power reserves similar to those provided in the present contracts, and that the energy reserves shall include a reserve approximately equal to 25 percent of the direct service industrial load to protect firm loads for any reason, including low or critical streamflow conditions, and an additional energy reserve of approximately the same amount to protect firm loads against the delayed completion or unexpectedly poor performance of regional generating resources or conservation measures, and against the unanticipated growth of regional firm loads. One intended result of these procedures is that there will be no increase in firm power commitments to the direct service industrial customs, except for technological improvements purposes.

Section 5(c)(2).—Self-explanatory.

Section 5(d).—Self-explanatory.

Section 6(a).—This section requires the Administrator to implement conservation measures, including but not limited to financial assistance for insulation and weatherization, increased system efficiency, and waste energy recovery by direct application. Financial assistance also includes technical assistance to consumers.

Waste energy recovery by direct application includes measures such as the recovery of heat produced in lighting or industrial processes and use of the recovered heat to reduce space heating requirements; Waste energy recovery does not include measures such as solar water heating systems which by direct application convert energy for use by consumers, however, such systems could be acquired as a renewable resource under subsection 6(b).

It is expected that in noting proposed conservation measures in his budget submitted to the Congress pursuant to Public Law 93-454, the Administrator shall describe proposals for demonstration projects in sufficient detail to inform Congress as to the type, geographic application and scope of the proposed demonstration projects, in addition to its cost. It is not necessary that every element or customer expected to participate in a proposal be identified.

Section 6(b).—The authorities in this section are in addition to the Administrator's authorities under other acts. The Administrator's authority to acquire electric power on a short term basis pursuant to section 11(b)(i) of Public Law 93-454, and the Administrator's authority to acquire electric power in exchange for transmission or other services are not in any manner intended to be affected by this section. Similarly the replacement of Federal base system resources is also intended to be consistent with the plan, and to satisfy the requirements of section 6, excepting resources acquired from projects authorized by Congress.

Section 6(c).—The Committee intends that the Administrator's decision in part (1) to acquire a major resource will be based upon substantial matter in the rulemaking record.

The Committee adopted alternative procedures in part (3) for the Administrator to follow in certain cases when he determines that he must act in the absence of a plan or when it is determined that a proposed action is inconsistent with the plan. In both cases a specific act of Congress is required before such actions can go forward. To develop a record to assist the Congress in its consideration of such requests, the Committee provided that hearings on the proposed action should be held in accordance with sections 556 and 557 of the Federal Administrative Procedures Act in cases where the proposed action is inconsistent with the plan. In the absence of a plan the Admin-

istrator would be required to develop a record by using a rulemaking type hearing format.

The purpose of part (5) is to provide an opportunity for customers, and particularly small utilities, to acquire appropriate shares of major resources in relation to their load requirements and not be frozen out of ownership, participation, or other sponsorship. The Committee intends that the offer be made in a timely manner and with reasonable terms and conditions, and acceptance or non-acceptance shall be made after a reasonable period for negotiation. This requirement should not be the basis for unreasonable delay in resource acquisition.

This section is referred to in section 9(h) dealing with the Public Utility Holding Company Act, Chapter 2C of Title 15, United States Code.

Section 6(d).—This section authorizes the Administrator to acquire from regional utilities the output of certain experimental, developmental, demonstration or pilot project resources (other than major resources). In the event no utility or political subdivision is willing to construct such a renewable resource at reasonable cost, the Administrator is authorized to construct such resource. The Committee expects that under most circumstances regional utilities or political subdivisions will offer to construct such facilities, and does not intend that this authority be used as the basis for a large construction program or commitment of financial resources by the Administrator. In addition, this research and development should conform to the plan, where areas of research and development are included in the plan.

Section 6(e).—This section requires the Administrator to make maximum practicable use of his customers and local entities in carrying out programs that require arrangements with customers. The Committee does not anticipate that it will be necessary for the Administrator to

deal directly with consumers in implementing conservation measures or acquiring resources. This provision does not give the Administrator any authority to implement mandatory conservation measures through his customers in the absence of the plan which includes mandatory conservation measures and a recommendation by the Council under subsection 4(f).

Section 6(f).—This section provides that the Administrator may enter into agreements which enable him to reimburse the resource sponsor's investigation and pre-construction expenses if, among other circumstances, the resource is subsequently denied State siting approval or other necessary State or Federal permits. The intent of this section is to assure that, through the Administrator's agreement with a resource sponsor, an atmosphere is not created which would prejudice a State siting authority's ability to make an independent decision. Investigation and pre-construction expenses include site investigation and preparation, design and engineering work, and preparation and collection of information to comply with Federal or State laws or regulations. Reimbursable expenses shall not include costs of acquisition of capital equipment or construction materials or construction costs.

This section further provides that the Administrator must terminate his financial commitment, except for certain expenses, after a final denial of an application for State siting approval. It is intended that a final denial include judicial review, if sought, of the denial of State siting approval.

Section 6(g).—Self-explanatory

Section 6(h).—The legislation provides that the Administrator shall grant billing credits to encourage independent conservation measures and development of renewable resources or multipurpose projects by his customers or political subdivisions. The Committee intends that these

credits are to provide an economic incentive for the development of such resources taking into account the risks and benefits accruing to the entity to be credited and the Administrator's other customers. The Committee is concerned that such resources would not otherwise be developed at an early date because it might be economically disadvantageous for a customer or political subdivision to undertake such measures or resources if the alternative is to rely on the Administrator to serve such loads at a melded rate.

The word independent as used in this section is intended to mean conservation activities or resource acquisitions of a customer or political subdivision outside of the region plan without assistance from the Administrator pursuant to this act.

The Committee has provided discretionary authority for the Administrator to grant billing credits to sponsors of any other resources in cases where the granting of such credits is not inconsistent with the plan, the resources for which the credit is granted reduce the obligation of the Administrator to acquire resources under this Act, and only to the extent such credits are cost-effective. It is intended that such credits shall be available only to the extent that power is actually available from the resource for which credits are granted. It is further intended that neither this provision nor the authorities in section 6(a) and (b) should be interpreted to authorize the Administrator to construct transmission facilities except pursuant to the Administrator's authorities under Public Law 93-454 (as amended).

The use of the words "cost-effective" in this section is intended to assure that the impact of such credit upon rates charged by the Administrator under section 7 will not exceed the impact on such rates which would have occurred if the Administrator had acquired an alternative

resource in the absence of the customer's independent conservation or resource activity.

Section 6(i).—The Committee has required the Administrator to exercise oversight over the construction, scheduling, completion, and operation of new resources acquired by the Administrator. This authority is not intended to allow the Administrator to become involved in the activities of corporations or constructing entities except as would be the normal practice under the circumstances and as they relate to the construction and operation of the new resource.

Section 6(j).—This section acknowledges and describes the Administrator's existing practices regarding the purchase and sale of electric power for the account of his utility and direct service industrial customers, and the services the Administrator furnishes to such customers. However, a priority for these services is given for the power from projects under construction on the effective date of this Act if such power was offered for sale to the Administrator at cost plus a reasonable rate of return and such offer was not accepted.

Section 6(k).—Self-explanatory.

Section 6(l).—This section requires that financial assistance, credits, and other benefits are equitably distributed throughout the region. The section is intended to assure that all customers in the region will be equitably treated through the consistent application of criteria of eligibility for such assistance throughout the region.

Section 7(a).—This section restates the Administrator's obligation periodically to establish and modify electric power and transmission rates. These rates shall continue to be established at levels to recover revenues sufficient to pay all of the Administrator's costs. The rates will be effective upon confirmation and approval by the Federal Energy Regulatory Commission. The Committee recognizes that prior to the Department of Energy Organization

Act, the Federal Power Commission exercised interim rate approval authority with respect to the Administrator's rates, and that the Commission presently grants approval, if necessary, on an interim basis pending final approval. Revenues collected under such interim approvals are subject to refund if the rates finally confirmed and approved are lower than the interim rates. This act is not intended to affect the exercise of this authority by the Commission.

Section 7 (b) through (h).—The description and methodology for developing the revenues to be recovered through rates under this section 7 are covered in Appendix B except as noted below. The specific configuration or form of the rates shall be as adopted by the Administrator under subsection 7(a).

At the request of the Committee, the Administrator has prepared an analysis of the rate provisions of the introduced legislation with certain amendments proposed to the Committee, and it is included as Appendix B. This analysis was widely circulated in the region and has become an important part of the common understanding about how the costs of resources would be distributed as a result of this legislation. The Committee takes notice of these understandings and the importance they played in the development of regional expectations for all classes of customers. In full recognition that as a matter of law under this act rates shall be established pursuant to specific statutory provisions in sections 7 and 9 and that the circumstances which were assumed in preparing this analysis will change over time, the Committee has included the computer analysis and accompanying narrative in the appendix.

Section 7(b).—This section establishes a rate or rates for electric power sold to meet the general requirements (defined in this section) of public body cooperative and Federal agency customers and utilities under section 5(b) (2); a rate test to limit the charges that may be recovered by such rates applicable to public body, cooperative and

Federal agency customers after July 1, 1985; and a supplemental rate charge to recover any costs not recovered as a result of the rate test, to be applied through rates to all other power sales of the Administrator which are not limited by the rate test. The supplemental charge in any year should be based on a prospective 5 year average of the amount which the rate without the limit would differ from that as limited by the test rate.

Section 7(c).—Self-explanatory.

Section 7(d)(1).—Self-explanatory.

Section 7(d)(2).—The Administrator is authorized to establish a special rate applicable to an existing direct service industrial customer whose continued operation would otherwise be threatened if: (1) it primarily uses raw materials which are indigenous to the region such as nickel ore, and (2) it accepts a contract similar to its existing modified firm power sales contract with the Administrator which provides that all the customer's power provides reserves to meet firm loads in the region. The Committee is aware of only one direct service customer, Hanna Nickel Mining and Smelting Co., Riddle, Oreg., which would fit the criteria of this section (d)(2). The Committee intends that this provision will apply only to that customer.

Section 7(e).—Self-explanatory.

Section 7(f).—This section specifies rates for firm power sales in the region not covered under subsections 7(b) through 7(d).

Section 7(g).—The costs or benefits under this section 7(g) are intended to be applied in an equitable manner and as appropriate to any or all of the rates for power sales of the Administrator in order to assure that he can meet the requirements of section 7(a) to collect sufficient revenues to recover all of his costs including repayment of the Federal investment in the Federal Columbia River Power System. The excess costs included in this section

(g) for experimental resources under section 6 are those costs for electric power produced in excess of the costs for a matching amount of electric power from resources the Administrator determines that would otherwise have been acquired by the Administrator under section 6.

Section 7(h).—The intent is that rate adjustments for the purposes under section 4(f) shall be superimposed on the rates under section 7(b) through 7(g). The total revenues to be collected by the Administrator through rates, however, would remain the same in accordance with section 7(a), so that rates not subject to such adjustments would be reduced in the aggregate.

Section 8(a).—This section amends the Federal Columbia River Transmission System Act of 1974, Public Law 93-454 (as amended), to permit the Administrator to make payments from the existing Bonneville Power Administration Fund in order to carry out the purposes of this Act. The section does not alter the other purposes for which the Administrator may make such payments under existing law.

Section 8(b).—This section amends Public Law 93-454 (as amended) in four respects. First, it permits the Administrator to use his bond proceeds to implement the authorities granted by this act, including the authority to provide financial assistance for conservation and renewable resources. Second, it specifies that the interest rate for Bonneville bonds shall not exceed the interest rate that would apply to such bonds if they were purchased by the Federal Financing Bank, as are the bonds of certain other federal power marketing or financing agencies. Third, it raises the limit on the amount of Bonneville bonds that may be outstanding at any one time to \$1.75 billion from the level of \$1.25 billion provided in current law. Finally, it adds the Administrator's payments under this act to his payments and expenses under Public Law 93-454 (as amended) in determining the amount to be deducted from the Administrator's gross receipts in the calculation of the Administrator's net proceeds under Public Law 93-454

(as amended); this means that such payments and expenses takes priority over the Administrator's obligation to pay the principal, premiums (if any) and interest on his bonds. The Administrator's ultimate obligation to repay all expenses, including borrowing costs, is not affected.

Section 8(c).—See analysis of section 3(k).

Section 9(a).—This subsection provides the Administrator the same general contracting authority for actions under the act as is provided under section 2(f) of the Bonneville Project Act, Public Law 75-329 (as amended).

Section 9(b).—This section reaffirms the Bonneville Power Administration as a "separate and distinct" organizational entity. The Administrator currently has the capability to carry out all of his personnel, budget and procurement functions and support activities for his major program functions. The Administrator has always exercised independent responsibility over such matters as the administration of his budget, local labor relations, the procurement of legal services, construction contracts, power marketing contracts, claim settlements, selection of technical experts and utilization of local administrative skills.

In order to meet the changing regional needs and to carry out the provisions of this act and the requirements of other statutes, it is necessary that the Administrator continue to be able to carry out his responsibilities in a businesslike and timely manner. The authority and duties of the Administrator under this act will continue to be subject to the supervision and direction of the Secretary. The Committee intends that the Secretary of Energy will, for all of the Administrator's program functions, act by and through the Administrator.

Section 9(c).—This section requires the Administrator to offer long-term (20 year) contracts as provided in this Act to all of his existing public body, cooperative, Federal agency and direct service industrial customers and regional

investor-owned utilities within nine months after enactment of this act. The Committee intends that the Administrator promptly commence negotiating new contracts under this section with each of the authorized parties. It is intended that such contracts contain adequate assurance as to the future power to be supplied to each customer particularly in the event of a regional power planning deficiency. This will facilitate the exchange of existing contracts for new contracts which carry out the allocation of Federal power as provided in this act.

Section 9(d).—This section requires that all electric power sold by the Administrator, including resources acquired under the act, is sold subject to the requirements of Public Law 88-552 (as amended) regarding the priorities for disposition of power. In addition, the Administrator's obligations to meet a customer's firm load requirements will be limited if that customer disposes of a portion of its own resources outside the region and thereby increases its or another regional customer's firm power purchases from the Administrator.

Section 9(e).—This section is intended to identify specific actions of the Administrator under the act as "final actions" under the Administrative Procedures Act for judicial review purposes. Judicial review of a final action related to rates is intended to be based upon substantial evidence in the rulemaking record. Any suit brought to challenge a final action of the Administrator under the act must be brought within 90 days of the final action. Where notice of the final action is published in the Federal Register, the 90 days begins on the date of publication of the notice.

Section 9(f).—This section is intended to allow State and local governmental units (cities, utility districts, joint operating agencies and other governmental units) to continue to finance regional generating resources to meet the loads of such governmental units with the proceeds of "tax

exempt" securities as long as the capability of such resources are primarily purchased by the Administrator to meet the loads of "exempt persons" as defined in section 103(b), title 26 of the United States Code.

Section 9(g).—The Committee expects the Federal Energy Regulatory Commission to make maximum use of the joint State board in reviewing the rates for power sold to the Administrator under sections 5(b)(2) and 6.

Section 9(h).—This section permits the formation and operation of generating subsidiaries by investor-owned utilities in the region primarily for the purpose of developing resources for the Administrator's acquisition and, under numerous safeguards and constraints, grants such subsidiaries a very limited exemption from the Public Utility Holding Company Act. If a revocation of the waiver should occur by either the Administrator or the Securities and Exchange Commission it is intended that the company receiving the revocation be able to reapply for a waiver under this section or under other applicable provisions of the Public Utility Holding Company Act.

The Committee has received an executive communication and an accompanying memorandum from the Securities and Exchange Commission concerning this provision. The materials provided by the Commission have been included in the appendix in an effort to clarify and delineate the policy issues and considerations which the Committee took into account in approving this provision.

Section 9(c) of S. 885 as introduced contained an anti-trust immunity provision and an exemption from the Federal Advisory Committee Act. Those provisions were included for the advisory committees created by S. 885, as introduced, to participate in the planning process. As amended, this act does not establish the committees and, therefore, the provision was stricken.

APPENDIX B.—NUMERICAL ANALYSIS OF RATE DIRECTIVES

PROPOSED PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Analysis of Rate Directives, Including Preference Customer Rate Limit

This analysis is intended to provide a comparison of wholesale power rates to the various regional customers of the Bonneville Power Administration under the proposed legislation. The base data used to complete the analysis reflects current estimates of costs and loads. The impact of these wholesale power costs upon the retail rates charged by BPA customers is not included in this analysis and will vary from customer to customer depending upon many other utility costs. Ultimate rates to the consumer are determined by Public Utility regulatory bodies, Boards, Commissions, or Councils that have jurisdiction over retail rates.

Under the proposed legislation there are three basic rates for power sold by BPA but no particular rate form has been assumed. One rate (Regional Rate) is calculated on the cost of Federal Base System resources and, as needed, IOU exchange power, and future resource additions and will apply to all preference customer and Federal agency loads, exclusive of new large industrial loads, and to investor owned utilities' (IOU's), residential and small irrigation loads up to the first 400 horsepower for any farm. A second rate (New Resource Rate) is applicable to all other utility sales and will be based on costs of resources acquired by BPA under the proposed legislation, and any FBS resources not required by Regional Rate Customers. Finally, after June 1985 the rate applicable to BPA direct service industrial customers (DSI's) will be based upon the retail rates applicable to industry served by BPA preference utility customers.

Particular attention has been given in this analysis to the "preference customer rate limit" which has been proposed as an amendment to section 7(b) of the proposed legislation. The Public Power Council (PPC) advocates this amendment to assure that BPA preference customers' ratepayers will not lose the financial benefits resulting from the preference clause in the Bonneville Act and tax exempt financing of publicly owned facilities if the legislation becomes law. The amendment would require BPA to test the estimated costs under proposed rates to preference customers under the Act against the costs which these customers would have encountered in the absence of legislation. If the estimated costs under BPA rates for any five year period exceed the estimated costs without legislation, the excess costs would be spread over all other rates of the Administrator. The potential effect of this section and its sensitivity to other factors is discussed in section B of this analysis.

Two sets of detailed tables are also included in this analysis. They analyze wholesale cost impacts of the proposed legislation under two current regional load forecasts, the Pacific Northwest Utilities Conference Committee's (PNUCC) regional load forecast and the Northwest Energy Policy Project (NEPP) forecast which could be termed a conservation load forecast. All load growth in the region is assumed to be met by the program. This reflects a maximum impact of sharing but doesn't preclude individual utility action. The tables cover six sample years in the period from 1980-81 to 1994-95. All were prepared by BPA using to the fullest extent practicable currently published data and estimates available from the regional entities with primary responsibility for such data.

Each of the rate directives contained in section 7 of the proposed legislation, including the rate elements of the proposed PPC amendments and the corollary DSI and IOU rate directives, and their application is discussed in section A. Section B discusses specifically the preference

customer rate limit. Basic data used in the analysis listed with explanatory assumptions in section C. Section D provides the "base case" detailed numerical analysis of regional rates under the PNUCC and NEPP forecasts. Lastly, section E summarizes several cases of detailed numerical analyses under varying data assumptions to show the sensitivity of the rate directives to changing conditions.

A. *Basic Rate Directives*—The wholesale power rates to be developed in accordance with these directives will be reviewed and revised as to structure and costs as often as once every year and no less often than once every 5 years. The rate forms (energy, capacity, time differential, conservation, etc.) and levels for each of these rate forms will be determined by the Administrator as presently done through public participation programs in the region and then filed for confirmation and approval with the Federal Energy Regulatory Commission. The overall revenues expected to be collected in accordance with each of these basic sets of rates will correspond to the costs identified in the rate directives.

1. *Regional Rate Exclusive of Preference Rate Limit Proviso (see subsection 7(b) of proposed legislation)*

a. *Rate Availability*—This rate applies to (1) All public body, cooperative and Federal agency customer (including any new preference customer) loads exclusive of new large industrial loads (also excludes any large industrial loads of a new preference customer) and (2) Residential and small irrigation loads (up to the first 400 horsepower for any farm) of the IOU's to the extent the IOU's make exchange power available to BPA at their average system wholesale power costs. The benefits of this rate are required to be passed through to these customers.

b. *Cost Basis*—The rate levels will be set to recover the costs corresponding to the requirements in this rate

group. To the extent power supply is needed the corresponding costs will be included in the following order: (1) Federal Base System resource costs reduced by revenues from the sale of nonfirm attributed to the Federal Base System resources; (2) IOU exchange power at their average system wholesale power costs including reserve costs but reduced by their revenues from sale of their power to entities other than their own consumers including consumers under long term contracts which provide for resale, and excluding the costs related to serving new large industrial loads, new loads outside the region and costs of construction work in progress except to the extent allowed in their respective rates by the regulatory commissions for plants already licensed and sited but in no event any costs associated with a plant that has been terminated; (3) New resources at the New Resources Rate (see section A.3 below) exclusive of any rate adjustments to the new resources rate that would also apply to these rates; (4) Rate adjustments applied to this rate in accordance with section A5 below; (5) Rate adjustments to any particular utility for compliance or noncompliance with conservation standards; and (6) Rate adjustments to the IOU residential and small irrigation customers due to the preference customer rate limit.

c. *Low System Load Density Discounts and Billing Credits*—This general rates or charges to individual systems within this basic rate directive may be adjusted to accommodate discounts for low system density and credits for conservation in addition to the regional efforts or development of individual resources (both are proposed PPC amendments).

2. *Preference Customer Rate Limit Adjustment (PPC amendment)*

a. *Rate Application*—This special adjustment applies to all public body, cooperative, and Federal agency customers of the Administrator projected to receive power

during the particular rate year. It is determined for each year under normal rate proceedings starting with the year 1985-86.

b. Preference Customer Limit Cost Determination

(1) The loads for establishing the resource requirements are (a) Public body, cooperative and Federal agency customer total requirements on the Administrator exclusive of new large industrial loads; and (b) DSI total loads within or adjacent to the service territory of the public bodies and cooperatives. (85 percent of existing DSI's as shown in the attached table)

(2) The cost of resources to meet these requirements are (a) the costs of available Federal Base System resources; (b) Costs of new resources, either actual or hypothetical, constructed or acquired by the public bodies and cooperatives as necessary to meet these preference customer load requirements using the financing costs of such agencies that would have resulted if actions of the Administrator under Section 6 of the Bill were not achieved; plus (c) Any other general system operating costs including reserves, related to service to such customers.

(3) The rate adjustment is established by determining the average difference for the specific rate year and each of the ensuing 4 years by subtracting these rate limit costs from the costs of the Regional Rate determined under section A.1 above exclusive of the A.5.c, A.5.d, A.5.f, and A.1.b(5) adjustments. The preference customer rate limit adjustment is the average of the differences over the 5 years.

(4) If such average difference is positive, it will reduce the revenues to be recovered under the regional rate from the public body, cooperative, and Federal agency customers in a given rate period. The adjustments that were previously applied under A.5.c, A.5.d, A.5.f, and A.1.b(5) are then applied back to the rates for the general require-

ments of these customers. The balance of the revenues not recovered due to the rate limit adjustment is then spread to rates for all other BPA power sold, including nonfirm.

3. *Direct-Service Industry (see proposed amendment)*

a. *Rate Availability.* This rate applies to all "Industrial Firm" sales to BPA's direct-service industries which provide planning and operating reserves. The quantity of power for rate purposes is based on the proportion of the total industrial requirement, on a long-term average (currently estimated to be between 85 percent and 96 percent of the total DSI load), that BPA projects it will be able to serve directly. This projected availability is predicated on the continued planning and development of "firm" resources under critical stream-flow conditions to carry 75 percent of the total DSI requirements. The balance would be served with resources which are in excess of critical planning amounts but operated to meet the entire DSI load as if it were firm. The operation of the System to carry out this purpose results from treating as a firm load the maximum amount of the DSI load (not all of which can be covered under critical streamflow planning), to the extent that this maximum load can be met in the initial period of the PNW Coordination Agreement Critical Period while protecting firm loads against the worst historical streamflow and maintaining an ability to restrict an equivalent amount of the DSI Loads in the later periods (without provisional or advance energy being made available for this amount of the DSI load). Further, in actual operation DSI power withdrawn or curtailed in excess of interruptions for critical streamflows would be replaced by power purchased by BPA on a short-term basis, if available. The projected amounts estimated for the purposes of this analysis recognize the currently projected resource deficits. However, it assumes that by 1985 under the proposed legislation the System would be in load/resource balance.

b. *Cost Basis.* The rate levels are set under different criteria for two separate periods reflecting the time when significant amounts of power currently under contract to the DSI's would become available through expiration of those current contracts.

(1) *1980-81 through 1984-85.* The industrial rates will be set to the levels estimated to be necessary to offset the increased costs to BPA which result from the purchase of IOU exchange power to the extent those costs are not covered through rates applicable for the other classes of power sold by BPA. Generally the costs will be shared during this period with any sales of excess firm, IOU load growth, new large industrial loads of preference customers, and contract demand sales for other special purposes. The rates will be applied to the entire projected availability. This rate is adjusted for the reserve benefits the DSI contracts provide.

(2) *1985-86 and all future.* The rate will be set at a level no less than that set for the year 1984-85 and that is equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial customers. This level is determined by applying a typical margin of cost ("markup" between the preference customers' retail industrial rates and their respective wholesale power costs) to the BPA wholesale rates to the preference customers for all power used to serve their industries. The rate is then adjusted for reserves.

(3) The rates set under paragraphs (1) and (2) above are adjusted to reflect the credits for the value of power system reserves made available to the region's power system through the ability of BPA to interrupt service to the DSI loads. These credits to the DSI rate are then shared as a cost of reserves to all firm power sales, including that portion of the DSI load considered as not providing these reserves (currently 50 percent of the DSI load).

(4) Revenue adjustments will be made to all sales other than the DSI's to cover the difference after 1984-85 between revenues collected from the DSI rate and all other rates and the cost of power required to serve the regional loads.

(5) Rate adjustments applicable in accordance with section A.5 below are reflected directly in the DSI rate through 1984-85 but only indirectly beginning in 1985-86 to the extent they modify the rates from BPA to public bodies and cooperatives for power that serves retail industrial customers.

(6) Rate adjustments to recover revenues not recovered from the public body, cooperative, and Federal agency customers because of the preference customer rate limit and any adjustments for compliance or noncompliance with conservation standards are reflected directly in the DSI rate. At-site discounts apply for the duration of present contracts that contain them.

4. *New Resources Rate (see subsection 7(f) of the proposed legislation)*

a. *Rate Availability.* This rate applies to all other firm sales including but not limited to (1) Investor-owned utility *total* load growth (including residential and small irrigation prior to exchange under subsection 5(b)(2) of the bill) beyond that met with their own resources; (2) New Large Industrial loads served by preference customers; (3) Amounts of additional power needed by Regional Rate loads (section A.1.b(3)) once such loads exceed the capability of the Federal Base System resources and the IOU Exchange Power; and (4) Contract demand type supplies for replacement resources, sales of excess firm or special purpose sales.

b. *Cost Basis.* The rate levels are set to recover the costs of (1) Any balance of Federal Base System resources in excess of the loads served at the Regional

Rate; (2) Any balance of IOU exchange power at average system wholesale power cost (section A.1.b(2)); (3) New resources acquired by the Administrator; (4) Rate adjustments applied to this rate in accordance with section A.5 below; (5) Rate adjustments to any particular utility for compliance or noncompliance with conservation standards; and (6) Rate adjustments to recover revenues not recovered from the public body, cooperative, and Federal agency customers because of the preference customer rate limit (A.2 above).

5. *General Costs* (see subsection 7(g) of the proposed legislation).

The following costs/benefits would also be included as an overall rate adjustment applied to all firm power sales under any rate.

a. Rate adjustment associated with the difference between the revenues from all sales and the cost of resources required for such sales.

b. The cost of reserves associated with firm sales. (Not charged to that portion of the DSI load providing such reserves.)

c. The cost of conservation commensurate with the benefits to those acquiring power under the respective rates.

d. The costs of research and development including pilot project costs to the extent these projects are not cost effective.

e. The revenue benefits from the sale of excess firm and nonfirm—generally allocated in accordance with the resources contributing to such revenues.

f. The costs of uncontrollable events.

g. Rate adjustments for general overhead and from all other costs and benefits as appropriate.

h. The costs of billing credits pursuant to subsection 6(h) of the proposed legislation.

B. Preference Customer Rate Limit—Application and Sensitivities

The preference customer rate limit is intended to assure that the financial benefits of the preference clause in the Bonneville Act will continue to accrue to BPA preference customers. It is based on the assumptions that: (1) ultimately all of BPA's base system resources would be sold to preference customers and Federal agencies, (2) BPA's total DSI load within and adjacent to preference customer service area (currently 85 percent per attached table) would be served by those preference customers, (3) preference customers would construct new generating resources to meet their loads in excess of the Federal Base System Resources using tax exempt bonds and REA/CFC loans to finance such construction, and (4) there would be some fixed and variable cost savings to such customers which would not be available without the regional purchase program envisaged under the proposed legislation.

Additionally the rate limit assures preference agencies their consumers' rates will not be affected if, in the future, IOU new resource costs are higher than anticipated, either through higher financing, construction, or operating costs. In turn, the resource costs of the IOU's will continue to be the concern of the state PUC's. If IOU costs are high compared to preference customers the IOU residential customers, as well as the IOU commercial and industrial rates will be directly affected.

The specific rate limit factors are objective in nature. The first, the size and cost of the Federal Base System Resources, will be determinable in much the same way that BPA applies in its current power marketing operations and ratemaking. The size and location of DSI loads with respect to preference customer service areas are also easily identified. The amount of new resources needed to meet preference customer load growth, including the applicable DSI load, and its cost may require some minor esti-

ming. This is principally because preference customer resource construction probably will never exactly match preference customer load growth (high or low). The monetary benefits which would not be available to preference customers without the program will be the hardest to determine. This analysis limits its consideration to two specific areas: lower financing costs and lower system planning and operating reserve costs. Consideration of other savings may be appropriate if they can be stated and quantified in an objective manner and they are not recognized in A.5. All these items will be fully reviewed in the normal rate setting process.

BPA has run several sensitivity analyses of the proposed limit to determine how it may be a factor in the rates. Case studies were made to determine the general effect of variations in load growth, various increases in cost of resources, new preference customers, lower DSI loads, increased inflation costs, and varied cost of exchange power. As might be anticipated, if the IOU annual costs for new resource developments are substantially higher than those of preference customers due to higher interest rates, lower than anticipated tax benefits and higher than expected capital costs, then the rate limit triggers in the later years of the analysis, after 1994-95. This impact seems reasonable since (1) Congress has granted tax exemption to public bodies and it makes sense if this financing benefit actually causes a substantial difference in program resource costs between public and IOU financed resources that the benefits should flow back to preference agencies, (2) the incentive to obtain tax benefits and apply them to annual resource costs will be clearly placed on IOU participants in the program, (3) the efficiency of the IOU's design and construction and the cost and feasibility of proposed resources becomes not only in the interest of the IOU's but the state regulatory bodies responsible for approving IOU rates. The rate limit would reinstate the yardstick principle which has traditionally been used to

support the multiple kind of utility ownership which exists in the Pacific Northwest today. Other areas which appear to cause the rate limit to apply are slower preference customer load growth than IOU load growth, lower DSI loads, and increased IOU exchange power costs.

C. Assumptions Used in Development of the Base Data for Numerical Analysis

Resources

1. Federal Base System. These amounts are estimates of the total Federal hydro and net-billed thermal expected to be available for sale under the program. Associated costs of Federal Base System power shown are derived by estimating the cost of transmitting Federal power on the BPA grid, the cost of generating Federal power from hydroelectric projects, and the cost of operating the net-billed thermal plants. The following schedule of future wholesale power rate increases was used to determine cost levels through 1986:

Rate Adjustment Date	1st Year of Study Affected	Effective Percentage Increase Over Present Level
December 1979	1980-81	90
July 1981	1981-82	99
July 1982	1982-83	122
July 1983	1983-84	132
July 1985	1985-86	134

The costs of these resources are spread over total estimated Federal energy resources including secondary resources in arriving at the expected sales rate.

2. IOU Base System. These amounts are the IOU system resources planned to be in service by 1983. Prior to 1983, the level of resource was set equal to the IOU total system load. The rates associated with these resources are estimates of the average delivered cost, in the

year shown, of all private utility resources expected to be operating by 1983.

3. PA Base System. Estimates of public agencies' own system resource dedicated to their loads as of July 1, 1976.

4. Incremental New Resource Costs. The incremental cost of new resources for each sample year was established for effective interest costs on the capital portions at 7.0, 7.25, 7.50 and 9.0 percent all at 100 percent debt financing. The effective interest costs were derived from a Lehman Bros., Kuhn Loeb study dated November 1978. The public agency financing costs with the regional backup (not Federal guarantee) were estimated at 7.00 percent; without regional backup, but all public agency and cooperative backup, at 7.25 percent. The IOU financing cost at 100 percent debt with regional backup was estimated at 9.00 percent.

The 7.50 percent effective interest rate for IOU new resources in the base case was determined by 100 percent debt at 9.0 percent interest less $\frac{1}{3}$ of the possible investment tax credits and rapid depreciation allowances assuming a 46 percent tax rate. A similar result obtains from 90 percent debt at 9.0 percent interest (could include preferred stock) and 10 percent equity at 18.25 percent interest with $\frac{1}{2}$ of the available tax benefits. No credit was given for lower capital costs resulting from possible IOU advantages in construction. The capital and O&M costs exclusive of financing is estimated here to be the same for both public and IOU plants.

The incremental costs of new resources were based on known, conventional thermal. These costs were also considered to be reasonably representative of renewable resource costs. Estimates of incremental costs for a typical nuclear plant, a typical mine-mouth coal plant, and a typical coal plant located at load center were made for each of the interest rate levels for each of the three years 1985,

1990 and 1995. The resulting incremental costs for each year were determined by weighting the costs of the three types of plant—50 percent nuclear, $33\frac{1}{3}$ percent coal-fired (mine-mouth) and $16\frac{2}{3}$ percent coal-fired (load center).

The average new resource costs which appear in the study cases are calculated by bringing on resources in the initial year they are needed at the incremental cost of new resources in that year. One-third of the incremental cost is assumed to be O&M including fuel expense. The O&M portion is escalated at 7 percent annually from the year the resource is brought on. Therefore the average cost of new resources in any year is a weighted average of already installed new resources with O&M escalated at 7 percent up to the given year and any additional new resources needed costed at the incremental cost of new resources for that year. The public costs were assumed for preference customer load growth and the IOU costs for IOU growth. The DSI growth was assumed to be met by public and IOU plants in proportion to their respective growth rates, and to include the full amount of all conditional allowances for technological improvement processes (not plant expansion).

5. Reserves.

a. The value of reserves provided by the right to interrupt the DSI load was calculated for each year in the following manner (no attempt was made to treat energy and capacity reserves separately):

1. The average megawatts of regional reserves being provided are normally considered to be one-half the DSI load. A more precise estimate is determined by taking one quartile of the DSI load plus whatever portion of the top quartile is assumed to be available in the given year.

2. The average cost of each megawatt of reserves is estimated by determining the capital costs (no O&M) associated with all of the 'new resources' that are

in place in the given year and the total Federal Base System costs in that year.

3. Applying the resultant average cost to the amount of reserves provided yields the total number of dollars associated with these reserves. The method described here does not establish the only way to evaluate the value of the reserves, but instead is an attempt to arrive at a reasonable estimate for purposes of this numerical analysis.

b. The amount of reserves applied to the preference customer rate limit computation is determined by:

1. reducing the average cost of each megawatt of reserves by the ratio of the total rate limit load to the total program resources;

2. reducing the megawatts of reserves provided by the DSIs by the percent DSIs within or adjacent to preference customers (85 percent assumed);

3. applying the average cost to the number of reserve megawatts.

c. The amount of Reserve Adjustment credited to the DSIs under this study of the program is equal to one-half of the total value of the reserves. Thus approximately one-half of the savings to the region, in not building standby generation reserves, was credited to the DSIs for providing these reserves, and the remaining one-half was shared among the region's firm loads including 50 percent of the DSI load. The crediting of 50 percent of the value of the reserves to the DSIs does not set a precedent for future BPA rate cases. The form of availability credit or other reserve credit mechanism to be applied is not meant to be specified or prejudiced by the assumptions that are here.

Loads

PNUCC Loads

6. IOU. Forecasts for both the domestic and rural loads as well as the commercial and industrial loads were

provided by representatives of the IOUs. Loads shown are for both east group and west group utilities. West group forecasts are consistent with loads appearing in the 1979 Bluebook.

7. PA. Total load forecasts are taken from the 1978 Bluebook. Net requirements on BPA are derived by netting the PA base system resources from their total load.

8. FA. Forecasts taken from 1978 Bluebook.

9. DSI. Forecasts taken from 1978 Bluebook, and based on DSI contract entitlement, assuming full qualification for technological improvement allowances. The load of the Alumax plant is not included here prior to 1983.

10. The Federal agency customer and DSI load forecasts under both the PNUCC and NEPP forecasts were considered to be the same since they are principally a contract load.

NEPP Loads

11. IOU. Forecasts for domestic and rural loads were made by applying a 3.90 percent growth rate per year to the PNUCC 1979-80 load of 3451 megawatts. For the loads of the commercial and industrial customers, a composite growth rate of 2.53 percent was applied to the PNUCC 1979-80 load of 4537 megawatts.

12. PA. By a cursory evaluation of some typical utility systems, the domestic and rural or residential component of load was found to approximate 40 percent of the utility class total load. Therefore, we assumed that 40 percent of the public agency PNUCC 1979-80 load was domestic and rural, and the remaining 60 percent was commercial and industrial. NEPP forecasts were derived by applying a 3.90 percent growth rate per year to the domestic and rural base load for 1979-80 of 2742 megawatts and a 2.53 percent growth rate per year to the commercial and industrial base load of 4112 megawatts.

BASE DATA

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	m/kWh	MW	m/kWh	MW	m/kWh	MW	m/kWh	MW	m/kWh	MW	m/kWh
RESOURCES												
Federal base system	8,199	8.5	8,740	7.6	9,750	7.9	9,870	8.0	9,520	8.7	9,470	10.0
Secondary	1,660		1,780		1,780		1,780		1,780		1,780	
IOU base system	8,404	16.2	9,176	18.0	9,176	20.3	9,176	20.9	9,176	23.1	9,176	26.3
PA base system	2,520		2,340		2,360		2,362		2,370		2,390	
Incremental new resource costs (100 percent debt):												
7 percent		21.5		25.1		28.7		30.5		37.7		48.3
7.25 percent		23.2		25.9		29.0		30.7		38.3		49.2
7.50 percent		23.9		26.6		29.7		31.3		38.8		49.7
9 percent		26.4		29.5		32.0		34.9		43.7		54.3
Value of regional reserves (millions)	\$59.8		\$85.0		\$112.2		\$157.8		\$242.0		\$360.0	
Reserves supplied by PA under rate ceiling (millions)							\$124.8		\$168.0		\$272.0	
Reserve adjustment credit to IOU's under program (millions)	\$29.9		\$42.5		\$56.8		\$78.9		\$121.0		\$180.0	
LOADS												
PRUCE loads:												
IOU D + R	3,736		4,072		4,415		4,598		5,375		6,421	
IOU C + I	4,468		5,104		5,567		5,798		6,933		8,681	
IOU total	8,404		9,176		9,982		10,396		12,308		15,102	
PA total	7,171		7,659		7,172		8,624		10,145		12,319	
PA net requirements	4,851		5,319		5,912		6,262		7,775		9,829	
PA total	221		259		275		284		305		326	
DSI, 75 percent	2,618		3,049		3,108		3,137		3,256		3,405	
DSI, 25 percent	1,072		1,065		1,085		1,095		1,135		1,184	
DSI total	3,691		4,114		4,193		4,232		4,391		4,589	
NEPP loads:												
IOU D + R	3,700		3,986		4,316		4,485		5,130		6,239	
IOU D + I	4,538		4,765		5,004		5,128		5,755		6,388	
IOU total	8,238		8,751		9,320		9,613		10,885		12,727	
PA total	7,065		7,588		7,879		8,227		9,299		10,850	
PA net requirements	4,745		5,168		5,619		5,985		6,929		8,480	

DSI CUSTOMERS

	Megawatts ¹	Percent of BPA total DSI megawatts
I. Within BPA preference customers' service areas:		
Alcoa—Vancouver.....	238.5	7.2
Alcoa—Wenatchee.....	213.1	6.4
Kaiser—Tacoma.....	152.0	4.6
Martin-Marietta—The Dalles.....	188.0	5.1
Martin-Marietta—Goldendale.....	210.9	6.4
Raynolds—Longview.....	414.0	12.5
Carborundum—Vancouver.....	28.1	.9
Subtotal.....	1,424.6	43.1
II. Adjacent to BPA preference customers' service areas:		
Anaconda—Columbia Falls.....	337.8	10.2
Kaiser—Spokane.....	448.6	13.6
Kaiser—Trentwood.....	62.1	1.9
Stauffer—Silver Bow.....	51.3	1.6
Georgia Pacific—Bellingham.....	20.3	.6
Oremet—Albany.....	3.4	.1
Intalco—Ferndale.....	422.4	12.8
Subtotal.....	1,356.9	41.0
III. Could not readily be served by BPA preference customers:		
Crown Zellerbach—Port Townsend.....	13.2	.4
Hanna Nickel—Riddle.....	114.0	3.4
Pacific Carbide.....	9.0	.3
Penwalt.....	45.7	1.4
Raynolds—Troutdale.....	271.6	8.2
Union Carbide.....	20.3	.6
Alcoa—Addy.....	53.2	1.6
Subtotal.....	527.0	15.9
Total.....	3,308.5	100.2

¹ Industrial firm contract demand as of Mar. 29, 1978.

D. Regional Program Study Cases

Footnotes to Regional Program Study Case

Line No.	
2, 5, 6.....	"PNUCC Base Case" from 1978 PNUCC West Group Forecast. "NEPP Base Case from Northwest Energy Policy Project 1978 median load estimate.
3.....	Own Resources dedicated to preference customer loads as of July 1, 1978.
8, 9.....	"PNUCC Base Case" from 1979 PNUCC West Group Forecast and the East Group Forecast. "NEPP Base Case" from Northwest Energy Policy Project 1978 median loan estimate.
7.....	Own resources from PNUCC West Group and the East Group Forecast limited to July 1, 1983, resource amounts.
10-12.....	From 1978 PNUCC West Group Forecast.
14.....	The sum of lines 4, 5, 8, and 12.
15.....	The sum of lines 4, 5, 8, and 10.
16-26.....	Preference customer rate limit calculation. For purposes of this analysis this is only a single year calculation. The averages of the cost differences over a five year period are not reflected here.
18.....	Rate estimated on average kilowatt hour cost based upon sale of all Federal hydro and net-billed resource energy including median year nonfirm energy.

- 19 ----- Assumes PA 100 percent debt financed 7.25 percent interest cost. O&M costs for generating resources estimated to escalate at 7 percent annum. Capital Costs Assumption No. 4 in Base Data.
- 20 ----- See Base Data Assumption No. 5.
- 25 ----- 85 percent of DSI Industrial Firm power contract demand.
- 27-40 ----- Breakdown of Regional Rate directive components.
- 31, 45 ----- Blended PA and IOU resource cost. See Base Data Assumption No. 4.
- 32, 52 ----- Adjustment for difference between anticipated revenues from all rates and the net cost of resources.
- 33, 49, 51 ----- Adjustment for cost of reserves furnished by DSI loads. Spread among all utility firm loads and 50 percent of DSI load.
- 38 ----- Preference customer rate limit credit (if any) is applied here.
- 39, 53, 65 ----- Increase of other rates for preference customer rate limit (if any) is applied here.
- 41-56 ----- Breakdown of New Resource Rate components.
- 57-60 ----- Breakdown of IOU Exchange Rate components. See Base Data Assumption No. 4.
- 61-68 ----- Breakdown of DSI Rate components.
- 62 ----- Prior to July 1, 1985, the DSI rate is set to recover the net costs of the IOU exchange not covered by other rates. For the purpose of this study the costs allocated to supplying the DSI load are an average rate which, if broken down, would be equivalent to 75 percent of DSI load served at the New Resource Rate and 55 percent of the top quartile served from Federal Base System secondary power. All costs are then spread over the total power projected to be made available to the DSI's.

After July 1, 1985, the DSI rate for this case is assumed to be 133 percent of the applicable wholesale power costs from BPA to preference customers. No attempt is made here to carry out the cost of service adjustments of proposed section 7(c)1. This cost was estimated by assuming industrial sales will represent 25 percent of preference customer loads in 1983. Thereafter 10 percent of preference customer load growth is assumed to be large new industrial load served at the New Resources Rate. The remaining 15 percent of industrial load growth and the pre-1983 industrial load was served at the regional rate. No specific size for large new industrial loads was assumed. An attempt is made to reflect projected total industrial load growth, and not the precise split between large and new industrial loads and the remaining industrial load growth. For statistical purposes under this study, the DSI rate is then constructed on a weighted average of the Regional Rate and the New Resources Rate using the above assumptions.

- 63 ----- Rate credit to DSI rate for value of reserves furnished by DSI loads. (See Base Data Assumption No. 5).
- 67 ----- Estimated at 125 percent of new resources cost.
- 72 ----- Until July 1, 1985, the costs shown represent a blend of BPA Regional Rate costs and IOU average resource costs. (50/50 in 1980-81 to 100 percent BPA Regional Rate beginning July 1, 1985, and thereafter).

E. Sensitivity Analysis Cases

A sensitivity analysis of the rates under varying load and resource cost conditions is necessary to evaluate the stability of the rate directives in relation to each other. It is also important to avoid a reliance

on the absolute amounts of the rate computations. The sensitivity variations hopefully provide a reasonable range of values and risks within which to evaluate the rate directive consequences.

Each of the variations listed below keep all assumptions the same except for the one identified. Each variation is then evaluated under both the PNUCC and the NEPP (conservation) load forecasts. Only the summaries of each analysis is listed.

Case No.	Variation
1, 2-----	Base case.
3, 4-----	The IOU incremental new resource costs are set equal to the preference customer new resource costs.
5, 6-----	Incremental new resource costs for both preference customer and IOU new resources are increased by 5 percent in 1984-85, by 6 percent in 1985-86, by 10 percent in 1989-90, and by 15 percent in 1994-95.
7, 8-----	A new preference customer is formed beginning in 1984-85 out of the IOU loads equal to 5 percent of the preference customer load.
9, 10-----	The Federal Base System rates are set assuming WPPSS financing of IDC for the Net Billed projects (39 percent rate increase in 1980-81).
11, 12-----	Beginning in 1984 the IOU exchange rate increases, reaching a level of 5 percent higher than in the base case in the year 1989-90. A 5 percent increase is used for 1994-95 as well.
13, 14-----	The DSI load is reduced by 10 percent beginning in 1982-83. This could approximate the DSI load without Alumax.
15, 16-----	The IOU new resource costs are assumed without the tax benefits (accelerated depreciation and investment tax credits).
17, 18-----	The markup applied to the typical public agency industrial customer average cost to determine the DSI rate is assumed to be 25 percent rather than 33 percent.

REGIONAL PROGRAM STUDY CASE

Line		1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
		MW	M/AWh	MW	M/AWh	MW	M/AWh	MW	M/AWh	MW	M/AWh	MW	M/AWh
PNUCC BASE CASE—90 PERCENT RATE INCREASE, PNUCC LOADS, CASE I													
1	Regional loads:												
2	Preference customers total	7,171		7,659		8,272		8,624		10,145		12,319	
3	Own resources	2,370		2,340		2,360		2,362		2,370		2,390	
4	Net requirements	4,851		5,319		5,912		6,262		7,775		9,929	
5	Federal agencies	221		259		275		284		305		326	
6	IOU total	8,404		9,176		9,982		10,396		12,300		15,022	
7	Own resources	8,404		9,176		9,176		9,176		9,176		9,176	
8	Net requirements	0		0		806		1,220		3,132		5,846	
9	IOU resources and family farm irrigation	3,736		4,072		4,415		4,593		5,375		6,421	
10	DSI:												
11	75 percent	2,618		3,019		3,108		3,137		3,256		3,405	
	25 percent	1,073		1,065		1,085		1,095		1,135		1,184	
12	Total	3,691		4,114		4,193		4,232		4,391		4,589	
13	Net requirements on BPA:												
14	Total	7,763		9,692		11,186		11,998		15,603		20,690	
15	Without DSI 25 percent	7,690		8,627		10,001		10,903		14,468		19,506	
16	Preference customer rate limit												
17	resources:												
18	Federal base system	8,190		8,740		9,750		9,476	8.0	9,436	8.7	9,470	12.2
19	Additional resources	19		335		1		667	29.8	2,376	35.6	4,686	43.9
20	Reserve costs								1.4		1.6		1.8
21	Total	8,209		9,075		9,751		10,143	10.8	11,812	15.7	14,156	23.0
22	Loads:												
23	Preference customer net requirements	4,851		5,319		5,912		6,262		7,775		9,929	
24	Federal agencies	221		259		275		284		305		326	
25	35 percent DSI	3,137		3,497		3,564		3,597		3,732		3,901	
26	Total	8,209		9,075		9,751		10,143		11,812		14,156	

REGIONAL PROGRAM STUDY CASE—Continued

Line		1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
		MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh
27	Regional rate resources:												
28	Federal base system	6,940	6.5	8,428	7.6	9,750	7.9	9,879	8.0	9,520	8.7	9,470	10.0
30	IOU exchange	0		0		411	20.4	1,274	21.3	3,935	26.3	6,421	33.7
31	New resources	0		0		0		0		0		785	44.2
32	Revenue adjustment								.4		1.1		.4
33	Reserve adjustment		.4		.5		.5		.6		.7		.8
34	Total	6,940	6.9	8,428	8.1	10,161	8.9	11,144	10.5	13,455	15.7	16,676	22.0
35	Loads:												
36	Preference rate credits												
37	Preference customers	4,851	6.9	5,319	8.1	5,912	8.9	6,262	10.5	7,775	15.7	9,929	22.0
38	Federal agencies	221	6.9	259	8.1	275	8.9	284	10.5	305	15.7	326	22.0
39	Preference rate adjustment												
40	IOU (residential and irrigation)	1,868	6.9	2,850	8.1	3,974	8.9	4,598	10.5	5,375	15.7	6,421	22.0
41	New resources rate:												
42	Resources:												
43	Federal base system	1,250	6.5	312	7.6	0		0		0		0	
44	IOU exchange	1,868	16.2	2,850	18.0	3,563	20.4	3,324	21.3	1,440	26.3	0	
45	New resources	0	22.5	0	25.6	351	28.8	1,033	30.4	4,949	38.1	10,036	44.2
46	Total	3,118	12.3	3,162	17.0	3,914	21.2	4,357	23.5	6,389	33.9	10,036	44.2
47	Loads:												
48	Regional rate	0		0		0		0		0		785	44.2
49	Reserve adjustment		.3		.3		.3		.4		.5		.6
50	DSI 75 percent	2,618	12.6	3,049	17.3	3,100	21.5	3,137	23.9	3,256	34.4	3,405	44.7
51	Reserve adjustment		.4		.5		.5		.6		.7		.8
52	Revenue adjustment								.4		1.1		.4
53	Preference rate adjustment												
54	IOU load growth	0		0		806	21.7	1,220	24.5	3,132	35.0	5,846	45.4
55	Excess resources	500	12.7	113	17.4	0		0		0		0	
56	Total	3,118		3,162		3,914		4,357		6,389		10,036	
57	IOU exchange rate:												
58	Base resources	8,404	16.2	9,176	18.0	9,176	20.3	9,176	20.9	9,136	23.1	9,176	26.3
59	New resources rate	0		0		806	21.7	1,220	24.5	3,132	35.0	5,846	45.4
60	Total	8,404	16.2	9,176	18.0	9,982	20.4	10,396	21.3	12,268	26.3	15,022	33.7
61	DSI:												
62	Loads:	3,200	11.5	3,635	15.7	3,706	18.3	3,960	19.3	4,187	24.2	4,293	30.1
63	Reserve credit		-1.1		-1.3		-1.7		-2.2		-3.4		-4.5
64	Reserve adjustment		.2		.2		.2		.3		.4		.4
65	Preference rate adjustment												

66	Net	3,208	10.6	3,635	14.6	3,705	17.8	3,958	17.3	4,107	21.2	4,293	36.7
67	IRE	483	28.1	479	32.1	488	38.0	274	36.0	284	45.2	296	55.2
68	Composite	3,691	12.9	4,114	16.6	4,193	19.9	4,232	18.7	4,391	22.6	4,589	32.3
69	Summary:												
70	Preference customers from program	4,851	6.9	5,319	8.1	5,917	8.9	6,262	10.5	7,775	15.7	9,929	22.0
71	Federal agency customers	221	6.9	259	8.1	275	8.9	234	10.5	305	15.7	326	22.0
72	IOU (residential and irrigation)	3,736	11.5	4,072	11.0	4,415	10.0	4,598	10.5	5,375	15.7	6,421	22.0
73	IOU (commercial and industrial)	4,668	16.2	5,104	18.0	5,567	20.4	5,793	21.3	6,933	26.3	8,901	33.7
74	IOU composite	8,404	14.1	9,176	14.9	9,982	15.8	10,396	16.5	12,308	21.7	15,822	28.7

NEPP BASE CASE—90 PERCENT RATE INCREASE,
NEPP LOADS, CASE 2

1	Regional loads:												
2	Preference customers total	7,065		7,508		7,979		8,227		9,299		10,870	
3	Own resources	2,320		2,340		2,360		2,367		2,370		2,390	
4	Net requirements	4,745		5,168		5,619		7,865		6,929		8,480	
5	Federal agencies	221		259		275		284		305		326	
6	IOU total	8,238		8,761		9,320		9,613		10,885		12,727	
7	Own resources	8,404		9,176		9,176		9,176		9,176		9,176	
8	Net requirements	0		0		144		437		1,709		3,551	
9	IOU residential and family farm irrigation	3,708		3,996		4,316		4,485		5,130		6,339	
10	DSI												
11	75 percent	2,618		3,049		3,108		3,137		3,256		3,405	
12	25 percent	1,073		1,065		1,085		1,095		1,135		1,184	
13	Total	3,691		4,114		4,193		4,232		4,391		4,589	
14	Net requirements on BPA:												
15	Total	8,457		9,541		10,231		10,818		13,334		16,926	
16	Without DSI 25 percent	7,584		8,476		9,146		9,723		12,199		15,742	
17	Preference customer rate limit resources:												
18	Federal base system	8,103		8,740		9,458		9,476		9,436		9,470	
19	Additional resources	0		184		0		270		29.5		3,217	
20	Reserve costs									1.6		1.9	
21	Total	8,103		8,924		9,458		9,746		10,2		12,687	
22	Loans:												
23	Preference customer net requirements	4,745		5,168		5,619		7,865		6,929		8,480	
24	Federal agencies	221		259		275		284		305		326	
25	85 percent DSI	3,137		3,497		3,564		3,597		3,732		3,901	
26	Total	8,103		8,924		9,458		9,736		10,966		12,687	

REGIONAL PROGRAM STUDY CASE

Line		1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
		MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh
27	Regional rate resources:												
28													
29	Federal base system	8,816	6.5	8,224	7.6	9,750	7.9	9,870	8.0	9,520	8.7	9,470	10.0
30	IOU exchange	0		0		28	20.3	764	20.9	2,844	24.7	5,655	31.7
31	New resources	0		0		0		0		0		0	
32	Revenue adjustments												
33	Reserve adjustment												
		4		5		5		7		8		1.1	
34	Total	8,816	6.9	8,224	8.1	9,778	8.4	10,634	9.6	12,364	14.6	15,125	20.1
35	Loads:												
36	Preference rate credits												
37	Preference customers	4,745	6.9	5,168	8.1	5,619	8.4	5,865	9.6	6,829	14.4	8,460	20.1
38	Federal agencies	221	6.9	259	8.1	275	8.4	294	9.6	305	14.4	376	20.1
39	Preference rate adjustment												
40	IOU (residential and irrigation)	1,850	6.9	2,797	8.1	3,884	8.4	4,485	9.6	5,130	14.7	6,339	20.1
41	New Resources rate:												
42	Resources:												
43	Federal base system	1,374	6.5	516	7.6	0		0		0		0	
44	IOU exchange	1,850	16.2	2,797	18.0	3,856	20.3	3,721	20.9	2,280	24.7	684	31.7
45	New resources	0	22.4	0	25.6	0	28.8	0	30.4	2,675	36.6	6,272	44.8
46	Total	3,224	12.1	3,313	16.4	3,856	20.3	3,721	20.9	4,965	31.2	6,956	43.5

47	Loads:																			
48	Regional rate	0		0		0		0		0		0		0		0		0		0
49	Reserve adjustment		3		3		3		3		3		3		3		3		3	
50	DSI 75 percent	2,618	12.3	3,049	16.7	3,188	20.7	3,137	21.4	3,254	31.8	3,405	44.2							
51	Reserve adjustment		4		5		5		7		7		8		8		10		10	
52	Revenue adjustment																			
53	Preference rate adjustment										1.4		1.1							
54	IOU load growth			0		144	20.8	487	21.6	1,709	33.6	3,551	45.6							
55	Excess resources	606	12.4	264	16.8	604	20.8	147	21.6	0		0								
56	Total	3,224		3,313		3,856		3,721		4,965		6,956								
57	IOU exchange rate:																			
58	Base resources	8,404	16.2	9,176	18.0	9,176	20.3	9,176	20.9	9,176	23.1	9,176	26.3							
59	New resources rate	0		0		144	20.6	437	21.6	1,709	33.6	3,551	45.6							
60	Total	8,404	16.2	9,176	18.0	9,320	20.3	9,613	20.9	10,885	24.7	12,727	31.7							
61	DSI:																			
62	Loads:	3,208	11.3	3,635	15.2	3,705	18.6	3,958	18.6	4,107	21.8	4,293	32.1							
63	Reserve credit		-1.1		-1.3		-1.7		-2.3		-3.4		-4.3							
64	Reserve adjustment		2		2		3		3		4		5							
65	Preference rate adjustment																			
66	Net	3,208	10.4	3,635	14.1	3,705	17.1	3,958	16.7	4,107	19.0	4,293	27.8							
67	IRI	483	28.0	479	32.0	488	36.0	274	38.0	284	46.0	296	58.0							
68	Composite	3,691	12.7	4,114	16.2	4,193	19.3	4,232	18.8	4,391	20.7	4,589	29.0							
69	Summary																			
70	Preference customer from program	4,745	6.9	5,163	8.1	5,619	8.4	5,865	9.6	6,929	14.4	8,460	26.1							
71	Federal agency customer	221	6.9	259	8.1	275	8.4	284	9.6	305	14.4	326	26.1							
72	IOU (residential and irrigation)	3,700	11.5	3,996	11.0	4,316	9.6	4,485	9.6	5,136	14.7	6,339	29.1							
73	IOU (community and industry)	4,538	16.2	4,765	18.0	5,004	20.3	5,128	20.9	5,755	24.7	6,388	31.7							
74	IOU composite	8,238	14.1	8,761	14.8	9,320	15.4	9,613	15.6	10,885	20.6	12,727	25.9							

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REGIONAL PROGRAM STUDY CASE SUMMARY

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh
PNUCC base case--90 percent rate increase PNUCC loads (case No. 1):												
Preference rate credits												
Prof. cust. from program	4,851	6.9	5,319	8.1	5,912	8.9	6,262	10.5	7,775	15.7	9,929	22.0
Fed. agency cust.	221	6.9	259	8.1	275	8.9	284	10.5	305	15.7	326	22.0
Preference rate adj.												
IOU (resid. and irrig.)	3,736	11.5	4,072	11.0	4,415	10.0	4,598	10.5	5,375	15.7	6,421	22.0
IOU (comm. and ind.)	4,668	16.2	5,104	18.9	5,547	20.4	5,798	21.3	6,933	26.3	8,601	33.7
IOU composite	8,404	14.1	9,176	14.9	9,962	15.8	10,396	16.5	12,308	21.7	15,022	28.7
Prof. rate adj.												
DSI from program	3,208	10.6	3,635	14.6	3,705	17.8	3,958	17.3	4,107	21.2	4,793	30.7
Composite	3,691	12.9	4,114	16.6	4,193	19.9	4,232	18.7	4,391	22.8	4,589	32.3
NEPP base case--90 percent rate increase NEPP loads (case No. 2):												
Preference rate credits												
Prof. cust. from program	4,745	6.9	5,168	8.1	5,818	8.4	5,865	8.6	6,929	14.4	8,466	20.1
Fed. agency cust.	221	6.9	259	8.1	275	8.4	284	9.8	305	14.4	326	20.1
Preference rate adj.												
IOU (resid. and irrig.)	3,708	11.5	3,998	11.0	4,314	9.6	4,485	9.6	5,130	14.7	6,339	20.1
IOU (comm. and ind.)	4,538	16.2	4,765	18.0	5,104	20.2	5,128	20.9	5,755	24.7	6,388	31.7
IOU composite	8,238	14.1	8,761	14.9	9,320	15.4	9,613	15.4	10,885	20.0	12,727	25.9
Prof. rate adj.												
DSI from program	3,208	10.6	3,635	14.1	3,705	17.1	3,958	16.7	4,107	19.0	4,793	27.4
Composite	3,691	12.7	4,114	16.2	4,193	19.3	4,232	18.0	4,391	20.7	4,589	29.4
2 percent new resource rate for both PA and IOU PNUCC loads (case No. 3):												
Preference rate credits												
Prof. cust. from program	4,851	6.9	5,319	8.1	5,912	8.9	6,262	10.5	7,775	15.6	9,929	21.8
Fed. agency cust.	221	6.9	259	8.1	275	8.9	284	10.5	305	15.6	326	21.8
Preference rate adj.												
IOU (resid. and irrig.)	3,736	11.5	4,072	11.0	4,415	10.0	4,598	10.5	5,375	15.6	6,421	21.8
IOU (comm. and ind.)	4,668	16.2	5,104	18.9	5,547	20.4	5,798	21.3	6,933	26.2	8,601	32.5
IOU composite	8,404	14.1	9,176	14.9	9,962	15.8	10,396	16.5	12,308	21.6	15,022	28.5
Prof. rate adj.												
DSI from program	3,208	10.6	3,635	14.6	3,705	17.8	3,958	17.3	4,107	21.0	4,793	30.3
Composite	3,691	12.7	4,114	16.5	4,193	19.8	4,232	18.4	4,391	22.4	4,589	31.9

2 percent new resource rate for both PA and IOU NIPP loads (case No. 4):

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Preference rate (credits)	-	-	-	-	-	-	-	-	-	-	-
Prof. cost from program	4,745	6.5	5,168	8.1	5,619	8.4	5,865	9.6	6,929	14.4	8,460
Fed. agency cost	221	6.9	258	8.1	275	8.4	294	9.6	303	14.4	326
Preference rate adj.	-	-	-	-	-	-	-	-	-	-	-
IOU (resid. and irr.)	3,700	11.5	3,996	11.0	4,316	9.6	4,485	9.6	5,130	14.6	6,138
IOU (comm. and ind.)	4,538	16.2	4,765	18.0	5,004	20.3	5,124	20.9	5,755	24.7	6,388
IOU composite	8,238	14.1	8,761	14.8	9,320	15.4	9,613	15.6	10,885	19.9	12,777
Prof. rate adj.	-	-	-	-	-	-	-	-	-	-	-
Doll from program	3,708	10.4	3,835	14.1	3,705	17.1	3,958	16.7	4,107	18.8	4,293
Composite	3,691	12.6	4,114	16.1	4,193	19.3	4,232	18.0	4,391	20.6	4,589

New resource costs shown by \$ 5, 10, 15 times (85-95) PNUCC loads (Case no. 51).

Preference rate credits																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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Prof. cust. from program	4,851	6.8	5,319	8.1	6,293	9.4	6,894	10.9	8,282	16.0	10,545	22.9
Fed. agency cust.	221	6.9	259	8.1	275	9.4	284	10.9	305	16.0	326	22.9
Preference rate adj.												
IOU (resid. and irrig.)	3,736	11.5	4,072	11.0	4,415	10.4	4,661	10.9	5,175	16.0	6,121	22.9
IOU (comm. and ind.)	4,648	16.2	5,104	18.0	5,567	20.5	5,798	21.4	6,933	26.4	8,691	33.9
IOU composite	8,404	14.1	9,176	14.9	9,982	16.0	10,396	16.3	12,508	21.0	15,022	28.9
Prof. rate adj.												
OSI from program	3,208	10.5	3,635	14.6	3,785	18.6	3,950	18.1	4,107	22.1	4,283	31.5
Composite	3,691	12.9	4,114	16.7	4,193	20.6	4,272	19.3	4,391	23.6	4,589	31.5

REGIONAL PROGRAM STUDY CASE SUMMARY

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh
PA loads incr. by 5 percent and IOU loads reduced NEPP loads (Case No. 8):												
Preference rate credits												
Prof. cust. from program	4,745	6.9	5,168	8.1	6,018	8.9	6,277	10.2	7,394	14.9	9,602	20.5
Fed. agency cust.	221	6.9	259	8.1	275	8.9	284	10.2	305	14.9	326	20.5
Preference rate adj.												
IOU (resid. and irrig.)	3,700	11.5	3,996	11.0	4,316	10.1	4,485	10.2	5,130	14.9	5,339	20.5
IOU (comm. and ind.)	4,538	16.2	4,765	18.0	5,004	20.3	5,128	21.0	5,755	24.9	6,388	31.8
IOU composite	8,238	14.1	8,761	14.8	9,320	15.6	9,613	16.0	10,885	20.2	12,727	26.2
Prof. rate adj.												
DSI from program	3,208	10.4	3,635	14.1	3,705	17.1	3,958	16.7	4,107	20.6	4,293	28.8
Composite	3,691	12.9	4,114	16.3	4,193	19.4	4,232	18.1	4,391	21.7	4,589	30.5
PNUCC with 40 percent BPA rate increase												
PNUCC loads (Case No. 9):												
Preference rate credits												
Prof. cust. from program	4,851	5.1	5,319	6.6	5,912	8.5	6,262	11.1	7,775	16.0	9,929	22.3
Fed. agency cust.	221	5.1	259	6.6	275	6.5	254	11.1	305	16.0	326	22.3
Preference rate adj.												
IOU (resid. and irrig.)	3,736	10.6	4,072	10.0	4,415	9.7	4,598	11.1	5,375	16.0	6,421	22.3
IOU (comm. and ind.)	4,668	16.2	5,104	18.0	5,567	20.4	5,798	21.3	6,933	26.3	8,601	33.7
IOU composite	8,404	13.7	9,176	14.4	9,982	15.7	10,396	16.8	12,308	21.8	15,022	28.9
Prof. rate adj.												
DSI from program	3,208	9.7	3,635	14.2	3,705	17.8	3,958	17.3	4,107	21.6	4,293	31.0
Composite	3,691	12.1	4,114	16.3	4,193	19.9	4,232	18.6	4,391	23.2	4,589	32.6
NEPP with 40 percent BPA rate increase												
NEPP loads (Case No. 10):												
Preference rate credits												
Prof. cust. from program	4,745	5.1	5,168	6.6	5,619	8.0	5,865	10.2	6,929	14.9	8,460	20.5
Fed. agency cust.	221	5.1	259	6.6	275	8.0	284	10.2	305	14.9	326	20.5
Preference rate adj.												
IOU (resid. and irrig.)	3,700	10.6	3,996	10.9	4,316	9.3	4,485	10.2	5,130	14.9	6,339	20.5
IOU (comm. and ind.)	4,538	16.2	4,765	18.0	5,004	20.3	5,128	20.9	5,755	24.7	6,388	31.7
IOU composite	8,238	13.7	8,761	14.3	9,320	15.2	9,613	15.9	10,885	20.1	12,727	26.1
Prof. rate adj.												
DSI from program	3,208	9.4	3,635	13.7	3,705	17.1	3,958	16.5	4,107	19.4	4,293	28.1
Composite	3,691	11.8	4,114	15.8	4,193	19.3	4,232	18.0	4,391	21.1	4,589	29.9

REGIONAL PROGRAM STUDY CASE SUMMARY

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh	MW	M/kWh
9 percent new resource rate for IOU's												
PRUCC loads (case No. 15):												
Preference rate credits:												
Prof. cust. from program	4,651	6.9	5,319	8.1	5,912	8.9	6,262	10.6	7,775	15.7	9,829	22.8
Fed. agency cust.	221	6.9	259	8.1	275	8.9	284	10.6	305	15.7	326	22.8
Preference rate adj.												
IOU (resid. and irrig.)	3,736	11.5	4,072	11.0	4,415	10.0	4,588	10.6	5,375	16.4	6,421	22.8
IOU (comm. and ind.)	4,668	16.2	5,194	18.0	5,567	20.4	5,798	21.4	6,933	27.0	8,601	35.0
IOU composite	8,404	14.1	9,176	14.9	9,982	15.8	10,386	16.6	12,308	22.3	15,022	29.8
Prof. rate adj.												
DSI from program	3,208	10.6	3,635	14.6	3,705	18.0	3,950	17.5	4,107	22.0	4,293	32.4
Composite	3,691	13.1	4,114	16.9	4,193	20.3	4,232	19.0	4,391	23.7	4,589	34.1
9 percent new resource rate for IOU's												
NEPP loads (case No. 16):												
Preference rate credits:												
Prof. cust. from program	4,745	6.9	5,168	8.1	5,619	8.4	5,865	9.6	6,929	14.4	8,660	26.7
Fed. agency cust.	221	6.9	259	8.1	275	8.4	284	9.6	305	14.4	326	26.7
Preference rate adj.												
IOU (resid. and irrig.)	3,700	11.5	3,996	11.0	4,316	9.6	4,485	9.6	5,136	15.7	6,336	26.7
IOU (comm. and ind.)	4,538	16.2	4,765	18.0	5,004	20.3	5,128	20.9	5,753	25.0	6,585	32.4
IOU composite	8,238	14.1	8,761	14.8	9,320	15.4	9,613	15.6	10,889	20.4	12,727	26.6
Prof. rate adj.												
DSI from program	3,208	10.6	3,635	14.6	3,705	17.1	3,958	16.7	4,107	19.4	4,293	29.0
Composite	3,691	12.9	4,114	16.4	4,193	19.6	4,232	18.2	4,391	21.3	4,589	31.0

Mark-up on OSI rate changed from 133 percent to 125 percent PMUC loads (case No. 17):

Preference rate credits										-0.3		
Prof. cust. from program	4,851	6.9	5,319	8.1	5,912	8.9	6,262	10.5	7,775	15.7	9,929	22.4
Fed. agency cust.	221	6.9	259	8.1	275	8.9	284	10.5	305	15.7	326	22.4
Preference rate adj.										.2		
IOU (resid. and irrig.)	3,736	11.5	4,072	11.0	4,415	10.0	4,590	10.9	5,375	16.2	6,421	22.4
IOU (comm. and ind.)	4,668	16.2	5,104	18.0	5,567	20.4	5,798	21.3	6,933	26.4	8,601	33.9
IOU composite	8,404	14.1	9,176	14.9	9,982	15.8	10,386	16.5	12,308	22.0	15,022	28.9
Prof. rate adj.										.2		
OSI from program	3,208	10.6	3,635	14.6	3,705	17.8	3,958	17.2	4,187	20.1	4,293	29.0
Composite	3,691	12.9	4,114	16.6	4,193	19.9	4,232	18.7	4,391	21.7	4,589	30.7
Mark-up on OSI rate changed from 133 percent to 125 percent NEPP loads (case No. 18):												
Preference rate credits										- .5		
Prof. cust. from program	4,745	6.9	5,168	8.1	5,619	8.9	5,865	9.6	6,929	14.4	8,460	20.5
Fed. agency cust.	221	6.9	259	8.1	275	8.4	284	9.6	305	14.4	326	20.5
Preference rate adj.										.3		
IOU (resid. and irrig.)	3,780	11.5	3,996	11.0	4,316	9.6	4,485	9.5	5,130	15.3	6,339	20.5
IOU (comm. and ind.)	4,538	16.2	4,765	15.0	5,004	20.3	5,128	20.9	5,755	23.3	6,388	31.8
IOU composite	8,238	14.1	8,761	14.8	9,320	15.4	9,613	15.6	10,885	20.3	12,727	26.2
Prof. rate adj.										.3		
OSI from program	3,208	10.4	3,635	14.1	3,705	17.1	3,958	16.7	4,017	18.3	4,293	26.3
Composite	3,691	12.7	4,114	16.2	4,193	19.3	4,232	18.0	4,391	19.8	4,589	28.2

Appendix G

CONGRESSIONAL RECORD—HOUSE

September 29, 1980 (daily ed.)

Page H 9848

Mr. DINGELL. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, the Pacific Northwest Electric Power Planning and Conservation Act is vitally needed in order to solve an electric power planning problem that, absent such a solution, is virtually certain to cause disruption in that region. The committee has given this bill the most careful consideration. We have explored every issue in depth and shaped the provisions of the bill. We have held hearings in the region and here in Washington, D.C. Unlike earlier versions which I strongly opposed, it represents a sound and rational solution to the impending crisis facing that region. I strongly urge your support.

The bill grants expanded authority to the Bonneville Power Administrator to acquire additional power on a long-term basis, but with significant and important safeguards. This authority will enable the Administrator to sign new contracts with his customers. Absent this authority, a regional dispute over access to existing low-cost power under current law will leave electric power planning in chaos.

. . .

Before closing, I want to express my appreciation for the hard work and great assistance our committees received from many of our colleagues on both sides of the aisle, from both within and outside the region. Their help and expertise and that of their staff was essential to our consideration of this legislation. I particularly want to commend Congressman SWIFT, who is the chief sponsor of the Commerce-Interior compromise, and Congressmen FOLEY, BONKER, DUNCAN of Oregon, DICKS, ULLMAN, MCCORMACK, SYMMS, and PRITCHARD for their untiring efforts to bring this bill to the floor today. Chairman STAGGERS and UDALL

and Chairman KAZEN, as well as Congressman BROWN of Ohio, Congressmen SHARP, CLAUSEN, and LUJAN, all of whom have no constituents in the region, also provided significant assistance in shaping this legislation in a way that is helpful to the region, and not harmful to other parts of the Nation.

I want also to thank Senators JACKSON, HATFIELD, MAGNUSON, CHURCH, McCLURE, and their staff for the cooperation we have received from the other body.

I want to thank the Administrator of the BPA for the technical assistance we have received from him and his staff, particularly, Mr. Larry Hittle, who has spent long hours on the technical aspects of this legislation for our committee, Dr. Terry Holubitz of Pacific Fisheries Commission and Mr. Bruce Miser, public power counsel, as well as others in the region have also been helpful to us.

[H 9849]

Last, I also want to express the deep appreciation on behalf of myself and Chairman UDALL to the staff of our committee and that of the Interior Committee for the work that has been done in preparing this legislation, as well as the staff of the House legislative counsel. I particularly want to call attention not only to the professional staff of the committee, but also to the administrative staff of both committees and the administrative staff of the legislative counsel who worked long hours on the legislation.

[H 9864]

MR. FOLEY

B. Why the Bill is Needed:

1. BPA supplies 50 percent of the Northwest's power. This power supply cannot be increased under existing law. The entire amount is already committed by contract to utilities and industries who are BPA customers. All these contracts expire between 1981 and 1994. All of BPA's limited

power supply must therefore be reallocated. If the reallocation is made by BPA (beginning next year), it will be the object of a decade of divisive law suits. If the reallocation is instead made by Congress, through this bill, it cannot be litigated and the region's divisiveness on power matters will be combined to less disruptive disputes.

. . .

C. How the Bill Meets These Needs:

1. The bill solves the BPA power reallocation problem by (a) authorizing BPA to acquire power from non-federal sources if needed to meet BPA customer loads, so that the need to reallocate is eliminated, and (b) specifying directly how much power each class of BPA customer is to receive, and at what cost. (The bulk of the bill consists of protections to insure that BPA's new authority is used first for conservation and renewables, and to insure effective regional and Congressional control to prevent any abuse of this new authority.) The bill's allocation system is the heart of the regionally-negotiated "peace" settlement, and is supported by all classes of BPA customers.

Appendix H
DSI Contract, (1981)
[3787]

(7) *Restriction of Deliveries*

(c) *First Quartile Restriction Rights.* Bonneville may restrict deliveries of Industrial Firm Power in amounts up to 25 percent of the Purchaser's Operating Demand, at any time and for any reason in order to protect Bonneville's ability to meet its Firm Obligations, subject to the provisions of this subsection. Bonneville may also restrict deliveries in such amounts for the purpose of displacing the operation or use of Federal System resources, if and to the extent that displacement is consistent with Bonneville's legal rights, legal obligations, and policies concerning displacement. Such restriction shall not be made for the purpose of selling nonfirm energy under NF-1 rate schedule, its successor, or any other rate schedule. Except as provided in paragraph (2) below, Bonneville shall not be obligated to plan for or acquire resources for the purpose of serving the Purchaser's First Quartile load, but Bonneville will treat the Purchaser's First Quartile as a firm load for purposes of resource operation, which firm load shall be subject to the restriction rights provided by this subsection.

* * *
[3789]

(d) *Second Quartile Restriction Rights*

(1) In order to meet its Firm Obligations, Bonneville may restrict deliveries of Industrial Firm Power to the Purchaser consistent with paragraphs (f)(3), (f)(4) and (j)(3) below in amounts up to the lesser of: (i) 25 percent of the Purchaser's Operating Demand, or (ii) the Purchaser's share, based on Operating Demand, of the amount by which Bonneville is unable to meet its Firm Obligations by reason of power and energy unavailable due to:

Delay.

(A) a delay from the initially planned date of commercial operation of a Federal System generating unit

or Conservation Investment Resource, subject to subparagraph (C) below:

Unexpected Poor Performance.

(B) (i) unexpected poor performance of a planned Federal System generating unit or Conservation Investment Resource which fails to attain initially its design capability for technological reasons including, but not limited to, design error or equipment failure, subject to subparagraph (C) below;

(ii) the inability of an existing, or a new, Federal System generating unit or Conservation Investment Resource that has [3790] attained commercial operation to perform at its expected capability for technological reasons including, but not limited to, design error or equipment failure, as determined by Bonneville or an appropriate regulatory agency having jurisdiction; or

Governmental Order.

(C) a delay or failure to attain capability pursuant to subparagraphs (A) and (B)(i) above, but not subparagraph (B)(ii) above, if such conditions are due to the order or orders of any governmental agency having jurisdiction over such matters; *provided however*, that laws or ordinances enacted by legislative bodies or through ballot measures shall not be considered orders of governmental agencies.

The total of restrictions pursuant to this subsection and the amount of curtailment of the Second Quartile pursuant to section 9(c) shall not at any time exceed 25 percent of the Purchaser's Operating Demand.

(2) *Federal System Operating Reserve.* In order to protect Bonneville's Firm Obligations from occurrences that otherwise might require Bonneville to restrict such Firm Obligations during the Contract Year of such occurrences, Bonneville shall have the right to make restrictions

during such Contract Year pursuant to subparagraphs (1)(B)(i) and (ii) above, subject to the limitations contained herein and in paragraphs (4), (5) and (6) below.

(A) Restrictions pursuant to subparagraph (1)(B)(i) above shall be limited, in the Contract Year of occurrence, to the lesser of [3791] 25 percent of the Purchaser's Operating Demand or the Purchaser's share, based on Operating Demand, of one-half the amount of energy by which Bonneville estimates, after such occurrence, but prior to acquiring or recalling additional resources and prior to an actual restriction or region-wide appeal hereunder, that it will be unable to meet its Firm Obligations during the remainder of such Contract Year because of such occurrence. If the occurrence continues in subsequent Contract Years, such limitation to the Purchaser's share of one-half the amount of energy shall not apply during such subsequent Contract Years, and Bonneville shall give notice of potential restriction, if necessary, pursuant to paragraph (f)(3) below, and subject to the limitations contained in subsection (f) and this subsection.

(B) Restrictions pursuant to subparagraph (1)(B)(ii) above shall be limited to the lesser of 25 percent of the Purchaser's Operating Demand or the Purchaser's share, based on Operating Demand, of one-half the amount of energy by which Bonneville estimates that it will be unable to meet its Firm Obligations because of such occurrence. In the case of such restrictions during the Contract Year of occurrence, such limitation shall be calculated for the remainder of the Contract Year, prior to and excluding the effects of the acquisition or recall of additional resources after such occurrence, and of any actual restriction or region-wide appeal hereunder. In the case of such restrictions for each subsequent Contract Year, such limitation shall

continue and shall be reflected in any notice pursuant to paragraph (f)(3) below.

[3792]

(C) Bonneville shall give as much notice of an actual restriction hereunder as is practicable under the circumstances, but in no event less notice than that required to permit an orderly reduction of any portion of the Purchaser's operation that may be reduced as a result of such restriction. In the event of an actual restriction, the Purchaser may submit a proposal under which the Purchaser will provide Bonneville the energy associated with the actual restriction, in accordance with subparagraph (f)(4)(D) below.

(D) Simultaneously with any actual restriction pursuant to subparagraphs (1)(B)(i) and/or (1)(B)(ii) above, Bonneville shall publicly call for a region-wide voluntary curtailment of non-essential uses of electric energy, and shall include in its region-wide appeal the information that Bonneville's ability to continue to meet its Firm Obligations depends on such voluntary curtailment as well as on actual restrictions of the Purchaser's load hereunder. In the case of actual restrictions imposed in Contract Years subsequent to the year of occurrence, such appeal shall be made simultaneously with such actual restrictions. All such appeals shall be repeated at regular intervals during any period when actual restrictions hereunder remain in effect.

(3) (A) Prior to its determination of the planned capabilities and planned completion dates of Federal System resources or Conservation Investment Resources that Bonneville plans to use to meet its Firm Obligations, other than Federal System resources committed to prior to the Effective Date, Bonneville shall afford to the Purchaser a [3793] reasonable opportunity to review and comment upon: (i) the preliminary determinations of such capabilities and dates, and

(ii) the methodology used by Bonneville as the basis for such determinations. Such opportunity shall be afforded only for the purpose of assisting Bonneville in assembling information, including but not limited to technical data, that may be useful to Bonneville in making its final determinations as accurate and realistic as possible. The same opportunity shall be afforded by Bonneville prior to any significant adjustment in such capabilities or completion schedules if adjustments in previously planned capabilities or completion dates are proposed for resources to be included in future final lists furnished pursuant to subparagraph (B) below. In the case of non-major resource programs involving more than one individual resource, Bonneville may to the extent necessary and appropriate determine the planned capability and planned completion date of the program as a whole, rather than specify individual resource capabilities and completion dates, and in such a case Bonneville shall also specify the average planned capability per individual unit, the planned number of units, and the planned schedule of implementation.

(B) Bonneville shall furnish the Purchaser by each June 1 a list of Federal System resources and Conservation Investment Resources for which the Purchaser's Second Quartile provides a reserve for the following Contract Year, listing initially planned completion dates and capabilities determined after the opportunity to [3794] comment pursuant to subparagraph (A) above. Such annual list shall be deemed a part of this contract. Such list shall be final for purposes of determining potential restrictions in such Contract Year in the case of restrictions for which notice is required prior to such Contract Year.

(4) (A) Delays in the construction of generating units to the extent caused by insufficient appropriated funds,

or delays in the implementation of Conservation Investment Resources to the extent caused by a demonstrable insufficiency of funding, shall not be a cause for restriction of Industrial Firm Power under this subsection.

(B) Bonneville shall use its best efforts consistent with its legal obligations to avoid any delays, unexpected poor performance, or other reductions in resource capability to which it is entitled, including but not limited to delays or other reductions required by order of any governmental agency having jurisdiction, if such resource capability is needed to serve Bonneville's Firm Obligations.

(5) In order to avoid making or continuing a restriction of Industrial Firm Power under this subsection, Bonneville shall acquire or recall any electric power and energy which it is legally authorized to acquire or recall from any source, including the Industrial Purchasers, and which is available at a Reasonable Cost.

(6) No restriction or right to restrict pursuant to this subsection shall be effective for more than seven years from the date of the event described in paragraph (1) above which gave Bonneville the right to restrict. Following loss or other reduction of resource capability for [3795] any cause, Bonneville shall use its best efforts, consistent with prudent utility practice and its obligations under the Regional Act and other applicable provisions of law, to plan for and to acquire resources sufficient to meet any resource deficiency caused by resource capability which is delayed or otherwise reduced for any reason to the extent such capability is required to enable Bonneville to meet its Firm Obligations.

(7) Delay from the initially planned date of commercial operation of a planned Federal System resource, which in Bonneville's sole determination is due to an estimated lack

of Firm Obligations to support the need for a resource (Resource Slowdown), shall not be a cause for restriction under subparagraph (1)(A) above. In the event of such a determination, the limitation period specified in paragraph (6) above shall be suspended for the duration of such Resource Slowdown due to lack of Firm Obligations, and the initially planned date of commercial operation of the resource shall (for the purpose of measuring delay) be changed to the new date selected after the Resource Slowdown has ended.

(8) *Conservation Investment Resources.*

(A) The restriction rights provided in paragraph (1) above shall be available to protect Bonneville's ability to meet its Firm Obligations in the event of the delayed completion or unexpected poor performance of planned Conservation Investment Resources that are implemented or acquired by Bonneville or, if implemented or acquired by another entity, relied upon by Bonneville in the calculation of its ability to meet its Firm Obligations.

(B) The term "Conservation Investment Resource" shall mean a conservation measure or resource for which power is (or is planned to [3796] be) saved by means of physical improvements, alterations, devices or other installations measurable in units, as distinct from conservation efforts that rely upon or promote changes in Consumer behavior. The restriction rights provided by this subsection (d) are not intended to, and do not, provide a reserve for unanticipated load growth, including unanticipated load growth caused by the failure of Consumers to behave in a manner that saves energy.

(C) Bonneville shall include in the list of resources to be made available to the Purchaser pursuant to subparagraph (3)(B) above those Conservation Invest-

ment Resources to which this subsection applies. A description of the Conservation Investment Resource, its planned schedule of implementation, and the planned savings it is expected to achieve for each Contract Year during such schedule, shall also be included for the purpose of determining planned completion dates and planned performance. Such list shall also include the available information on the actual rate of implementation of such resource in the case of lists made available to the Purchaser after the planned date on which implementation of the resource was to have begun.

(D) For purposes of determining the amount of electric power and energy planned to have been saved but not saved in fact by any such Conservation Investment Resource, the following formula shall be used to compute actual savings achieved in each Contract Year, and such savings shall be deemed to have been achieved in the absence of reliable evidence to the contrary:

[3797]

$$A_s = \frac{A_u}{P_u} \times P_s, \text{ or } A_s = A_u \times \text{planned savings per unit}$$

where:

A_s = actual savings deemed achieved;

A_u = actual physical units improved, altered, installed or otherwise appropriately implemented;

P_u = physical units planned to have been improved, altered, installed or otherwise implemented; and

P_s = planned savings (to be determined by multiplying planned savings per unit times P_u).

(E) The determination of P_u , P_s , and planned savings per unit in the foregoing formula shall be made independently by Bonneville for all Conservation Investment Resources, on the basis of historical experience and realization factors, and other available in-

formation likely to help produce realistic values for these variables; *provided, however*, that in the case of Conservation Investment Resources relied upon by Bonneville in the calculation of its ability to meet its Firm Obligations but planned to be implemented or acquired by another party, such determination may be made through a process selected by Bonneville and available for review and comment by the Purchaser as contemplated in paragraph (d)(3) above. Such determination shall give particular weight to the appropriate historical experience, if any, with similar resources, which shall be the starting point in determining the estimated amount of power those types of resources may produce, with the goal of arriving at values for P_a and P_s that are likely to [3798] equal A_a and A_s , respectively. The parties agree that the objective of a Conservation Investment Resource program is that P_a should not exceed A_a , and P_s should not exceed A_s , except for unforeseeable reasons, and that the values adopted for P_a and P_s should be readily achievable in actual practice.

(F) In accordance with the foregoing provisions, a Conservation Investment Resource shall be deemed to have been delayed in completion or to have had unexpected poor performance if, and to the extent, that A_s is less than P_s , each determined as set forth above. Bonneville shall make such determination of A_s prior to each June 1, based on A_s for the prior calendar year.

(G) If and when Bonneville learns that A_s is less than P_s for any given Conservation Investment Resource, at any point during the implementation of such resource, subject to the provisions of paragraph (6) above, Bonneville shall take appropriate steps to replace the capability unavailable to it, as if a planned generating resource had been delayed in completion or had failed to achieve its designed capability.

[3833]

. . .

14. Definitions

. . .

(h) "*Firm Obligations*" means all of Bonneville's firm commitments to supply electric power and/or energy (Firm Commitments):

- (1) existing on the Effective Date,

[3834]

- (2) in the Region incurred on or after the Effective Date,

- (3) other Firm Commitments that Bonneville may incur that are supported by Bonneville's firm resources when incurred.

Seventy-five percent of the Industrial Purchasers' Operating Demands shall be a Firm Obligation for purposes of both resource planning and operation, and, in addition, 25 percent of such Operating Demands (the Industrial Purchasers' First Quartiles) shall be a Firm Obligation for the purpose of resource operation only, subject to restriction provisions pursuant to section 7. In its application of restrictions pursuant to section 7, and in its operations pursuant to section 8, Bonneville shall first serve the remaining 75 percent of the Industrial Purchasers' loads before serving the Industrial Purchasers' First Quartiles.

. . .

[3835]

(i) "*Industrial Firm Power*" means a unified class of electric power which Bonneville will make continuously available to the Purchaser on a Contract Demand basis subject to:

- (1) the restriction applicable to deliveries of all firm power pursuant to Uncontrollable Forces and Continuity of Service provisions of Exhibit B;

(2) the additional restrictions that apply to the Purchaser under section 7; and

(3) a restriction which is made necessary because the operation of generation or transmission facilities used by Bonneville to serve the Purchaser and one or more priority and new resource firm power purchasers is suspended, interrupted, interfered with, curtailed, or restricted as a result of the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service provisions of Exhibit B, at which time Bonneville shall restrict the Purchaser's Operating Demand for Industrial Firm Power to the extent necessary to prevent, if possible, or minimize restriction of priority and new resource firm power; the extent of such restrictions shall be limited for Industrial Firm Power by section 7 of this contract.

. . .

[3836]

(o) "*Quartile*" means 25 percent of the Purchaser's Operating Demand. "*First Quartile*" means the 25 percent of the Purchaser's Operating Demand which is not treated as a firm load for Bonneville's resources acquisition planning purposes.

Appendix I

VIII Contract Official Record 2334

DEPARTMENT OF ENERGY [Letterhead]

Office of the Administrator

Bonneville Power Administration

P.O. Box 3621

Portland, Oregon 97208

AUG 19 1980

Honorable Abraham Kazen, Jr.
Chairman, Subcommittee on Water
and Power Resources
Interior & Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During the markup of S.885, the Pacific Northwest Electric Power Planning and Conservation Act, in the Subcommittee on Water and Power Resources, you requested subcommittee staff to obtain from BPA an analysis of the rates projected for direct-service industrial customers (DSIs) under the legislation, as well as the approximate cost of power in the Northwest from new resources and from resources that were developed at the time each DSI facility was first constructed. Following discussions with your staff, BPA has prepared the information that follows. We hope it will be of assistance to you.

I. Chart Shown in Appendix I

The chart shown in Appendix I will be referred to throughout these comments, and a brief explanation of it may assist you in your review of the narrative material that follows.

The line designated A represents the currently projected DSI rates under the legislation, through the operating year 1994-95. The derivation of these rates is explained

in the next section of these comments. The top line (designated A') is the projected DSI rate under the legislation before adjustment for the value of reserves the DSIs provide.

The middle line (designated B') represents the currently projected wholesale firm power rates for BPA's public body and cooperative customers, i.e., preference utility systems that purchase power from BPA at wholesale for resale to their own consumers. Under BPA's present rate schedule DSIs are charged virtually identical rates as the preference customers (the availability credit given to the DSIs for interrupting their load is the main difference).

[2335] The wholesale rate to public bodies and cooperatives is used, under the legislation, as one component of the DSI rate in the period after July 1, 1985. It is combined with the cost of new resource for their assumed new large industrial loads to estimate the wholesale firm rate for all preference customer industrial loads (line designated B').

The bottom line (designated C) represents the rate that the DSIs would be charged if—hypothetically—their essentially fixed loads continued to be served, as they are today, by resources currently committed to BPA's loads. This line rises as it moves to the right to reflect projected inflation in the operation and maintenance costs of existing resources and the cost of resources currently under construction.

It may help in examining the chart to know that with a total power consumption (firm and non-firm) of roughly 3500 average megawatts (MW), each one-mill increase in the DSI rates costs the DSIs, and returns to BPA, an additional \$30.7 million per year.

II. DSI Rates Under S.885

As shown on the chart, and as explained in greater detail below, the legislation essentially converts the DSIs from consumers at wholesale rates to consumers at retail

rates. The additional revenue collected from the DSIs as a result of this change in rate policies provides the money needed to extend the benefits of relatively low-cost power to the region's residential and small farm consumers (through the exchange provisions of section 5(c)). In other words, the surrender by the DSIs of their existing contracts in return for new long-term contracts at higher rates under the bill is what "frees up" low-cost power for the residential and small farm consumers of privately-owned utilities (who under the preference clause are not now eligible for firm power from BPA).

BPA's actual rate directives for all regional customers are set forth in section 7 of the bill. As you know, these directives do not in themselves establish actual rates for any of BPA's customers. Instead, the rate directives specify how those rates should be calculated, based on an allocation of costs. The actual costs will depend on many factors and are not, of course, yet known. For this reason, all projected rates under the legislation are estimates, and the estimates are based on assumed values for each variable. The assumptions used in computing the rates shown on the chart are listed in Appendix II. The sensitivity of the rate projections to changes in the assumed values of individual variables is suggested by the sensitivity analysis included in the Senate Report on S.885 as Appendix B (although the absolute figures in that document would be different if, as in these comments, updated costs and assumptions were used).

The rate directives incorporated in section 7 were a "rate package" proposed by the Public Power Council after long and intensive discussions within the region, and represent a consensus of all classes of BPA customers plus the Northwest states and local governments. These provisions were incorporated in S.885 in the Senate and have been retained intact in all three markups conducted thus far in the House of Representatives.

[2336] The DSI rate directives may be found in section 7(c), and cover two time periods: the pre-1985 period and the post-1985 period. Prior to July 1, 1985 the DSI rates are to be established at a level designed to recover both the costs of the BPA resources necessary to serve these loads and the otherwise unrecovered costs of the section 5(c) power exchanges carried out for the benefit of the region's residential and small farm consumers. By 1985, as indicated on the chart, this means the DSI rate is projected to be a third again higher as the rate for public bodies and cooperatives, and therefore about the same as the retail industrial rates charged by such utilities to their own industrial customers in the region.

After July 1, 1985, the rate directive specifies that the DSI rate is to be equitable in relation to the retail rates charged by public bodies and cooperatives to their own industrial customers in the region. The calculation of an "equitable" rate is required to be made by adding a typical retail utility margin (or "markup") to a wholesale power cost. The wholesale is in turn required to be the rate at which BPA sells to public bodies and cooperatives the power these utilities use to serve their own industrial loads; this means a weighted average of sales under the section 7(b) rate and sales under the section 7(f) rate, since the latter rate would apply for sales of BPA power to these utilities to the extent any new industrial loads of the utilities fall within the definition of "new large industrial load" contained in section 3(14) of the bill. This weighted average is represented on the chart by the line B'. When the typical retail markup is added to the amounts indicated on line B' the typical public agency industrial retail rate for firm power results line A'. When it is then adjusted for value of reserves (i.e. this adjustment reflects the less than firm power the DSI's purchase from Bonneville), the DSI rate indicated on line A results.

During both periods, as today, BPA must separately adjust the DSI rates to reflect a separate aspect of their power, namely the provision of system reserves through BPA's rights to interrupt or withdraw power from the DSIs when needed to protect other firm loads within the region. Providing system reserves is a service BPA undertakes for its firm power customers, the cost of which is borne by all BPA customers including the DSIs. BPA currently charges the DSIs for all their power as if it were firm, rather than charging a lower rate for the power that BPA may interrupt, and provides the DSIs with a rate credit—a retroactive rate adjustment—only when an interruption actually occurs. Subsection 7(c) requires that BPA adjust the DSI rates based on the value of the system reserves provided through BPA's rights to curtail service to these loads. This means that BPA as part of its rate filings must investigate and put a price on alternative methods of providing equivalent reserves.*

[2337] It should be emphasized that the rate directives govern only the total amount of revenue to be collected from each class of customer, not the rate form used to recover this revenue (see section 7(e)). This of course applies to the DSI rates, whose form—including the form of the credit for interruptions—is not determined by the bill. BPA will be receptive to all suggestions on rate design issues.

Four additional points should be made. First, the rate estimates shown in Appendix I reflect the cost and load assumptions indicated in Appendix II. If actual costs or loads turn out to be higher, the actual DSI rates will be higher. If, on the other hand, actual costs or loads turn out to be lower, all BPA customers (including the DSIs) will benefit in the form of lower rates.

*There are several additional reasons why the DSIs loads, both historically and today, increase the efficiency of the system and reduce overall power costs for the region, but these appear to be beyond the scope of your present inquiry.

Second, these rate estimates show the costs only of that power the DSIs buy from BPA, which is not the same as the actual power costs experienced by the DSIs. When the DSIs are interrupted, as they have been for increasingly longer periods each year, they must either curtail production or purchase more expensive replacement energy from non-Federal sources. Either alternative raises DSI power costs above the BPA rate, sometimes substantially.

Third, the DSI rate directive is intended over time to put the DSIs on a comparable basis with most of the region's other industries, and particularly those industries served by the utility systems that would be most likely to serve the DSIs in the absence of this legislation. One result of this transition to "retail" status from "wholesale" status is that the present economic advantage enjoyed by the DSIs over similar industries in other parts of the nation will apparently come to an end, particularly when the cost of power interruptions and transportation are taken into account. (These conclusions may be found in the 1979 report of the Department of Commerce based on earlier estimates of the DSI rates under legislation.)

Fourth, the DSIs are the only customer class whose rates will be increased as a result of this legislation. In addition, the price of obtaining new long-term contracts at these higher rates is, for the DSIs, the surrender of their existing long-term contracts which have not yet expired, and under which (as indicated above) they essentially pay wholesale rates for their power. BPA's ability to implement this legislation does depend on the willingness of the DSIs to accept this change of contract status and the higher power costs that go with it.

III. Cost of Power From Old and New Resources

You also requested an analysis of the cost of power from various Northwest resources, particularly new resources coming on line today and resources that came on line in the era when the DSI facilities were first built in the region.

[2338] The comparison of old and new power costs may be aided by noting first the cost of BPA power from resources in existence today. These costs are basically those indicated by line C on the chart in Appendix I. That BPA's projected costs for all customer classes are higher than those shown on line C illustrates the high cost of new resources, including conservation, which are needed to deal with load growth occurring within the region. As you know, this load growth is almost exclusively utility load growth. The DSI loads are essentially fixed in size by present contracts, and section 5(d) of S.885 would require that future DSI power entitlements be limited to present DSI power entitlements. Thus, if the DSI loads in existence today were simply served with resources currently committed to BPA's loads, their future rates would be those indicated on line C. Such rates, however, would require that utilities pay the entire cost of their own load growth, with no increased contribution from the DSIs. A question that would need to be studied in order to justify such a rate is whether the DSI's accrue any benefits or costs from the region's increased growth. To the best of our knowledge, this is not a pricing system that anyone has seriously considered for the Pacific Northwest or any other region.

The cost of new resources needed to meet utility load growth depends, of course, on many factors, including the type of resource and its date of implementation or construction. In general, there appear to be opportunities for some conservation programs in the Northwest that will "produce" power at a cost as low as 20 mills per kWh. By contrast, power from coal-fired and nuclear power plants currently under construction but not yet completed in the Northwest are projected to range from 45 mills per kWh to 60 mills per kWh when inflation is included (as it is in all projections used in these comments.) The reason, incidentally, that the DSI rates have more than doubled since 1979 is that the DSIs are required to share in the cost of new resources already being acquired by BPA under existing authority.

The cost of new resources at the time the DSI facilities were first constructed was, of course, far lower than the cost of new resources today. BPA did not substantially increase its rates for the first time until 1974, by which time virtually all the present DSI load was already in existence. Prior to 1974, the average BPA rate was 2.4 mills per kWh, reflecting the low embedded costs of an almost exclusively hydroelectric BPA system. The chart below shows the date of first construction for each DSI facility and their major additions and the approximate cost of new resources during that era, as well as the then-effective basic BPA rate:

[2339]

<u>Facilities (Contract Additions)</u>	<u>Years Covered</u>	<u>Approx. New Gen. Resource Cost (Includes Transmission)</u>	<u>Average BPA Rate</u>
Alcoa, Oregon Shipbuilding	1939-40	1.8	2.0
Dupont, Kaiser, Reynolds, Union Carbide	1941-45	1.8	2.5
Alcoa, Carborundum, Keokuk, Kaiser, Reynolds	1946-50	1.9	2.4
Alcoa, Hanna, Harvey, Kaiser, Reynolds, Victor	1951-54	2.0	2.5
Anaconda, Cerro, Hanna, Kaiser, Penn Salt, Reynolds, Victor, Webb & Knapp	1955-62	2.0	2.3
Alcoa, Anaconda, Carborundum, Cominco, G-P, Intalco, Kaiser, Monsanto, Penn Salt	1963-66	2.4	2.4
Alcoa, Anaconda, Dow, Hanna, Intalco, Kaiser, Martin- Marietta, ORMET, Reynolds	1967-73	2.9	2.4
Carborundum, Crown Z, Hanna, Kaiser, Penn Salt, Reynolds, Stauffer, Union Carbide	1974-78	5.4	3.0

Two additional comments should be included in the discussion of these resource costs. First, as you know, the DSIs receive a mixture of firm and non-firm power, unlike other BPA customers. Half the energy and all of the capacity associated with the DSI loads may be interrupted or withdrawn by BPA under certain circumstances

to meet the firm power needs of other customers (see Appendix III). As a result, only about half the DSI power could even theoretically be used by utilities for serving the loads of other types of customers, including load growth. The other non-firm half of the DSI Load represents reserves that the region would have to carry in some form in any event. In the absence of the DSIs, it might be difficult for BPA and the region to earn equivalent revenues from the sale of this reserve capacity and reserve energy. Thus, while the DSI firm load represents roughly 1.7 large new conventional power plants, the fact that the DSI power is nonfirm saves the region the need for another 1.7 conventional power [2340] plants of the same size (or their equivalent). This is one reason why, from a rate impact standpoint, it is beneficial for other consumers that the DSIs are part of the regional power system in the Northwest.*

Second, since the DSIs today and under the legislation pay rates that recover considerably more than the costs of the existing resources used to serve their loads, the cost of load growth is felt by non-DSI customers much less severely than it would be if these loads did not exist. Turning again to the chart in Appendix I, the difference between line C and line B in effect represents payments the DSIs make in order to pay their proportionate share of the costs of load growth, although their loads are not growing. The difference between line B and line A represents the additional amount paid by the DSIs under the bill primarily in order to make lower cost power available to the region's residential and small farm consumers through the mechanism of the section 5(c) exchange.

*There are several additional reasons why the DSIs loads, both historically and today, increase the efficiency of the system and reduce overall power costs for the region, but these appear to be beyond the scope of your present inquiry.

We hope this information will assist you in your consideration of S.885. I would be happy to provide additional information should you or your staffs desire it. At the request of the subcommittee staff we are forwarding copies of this letter to members of the subcommittee.

Sincerely,

Administrator

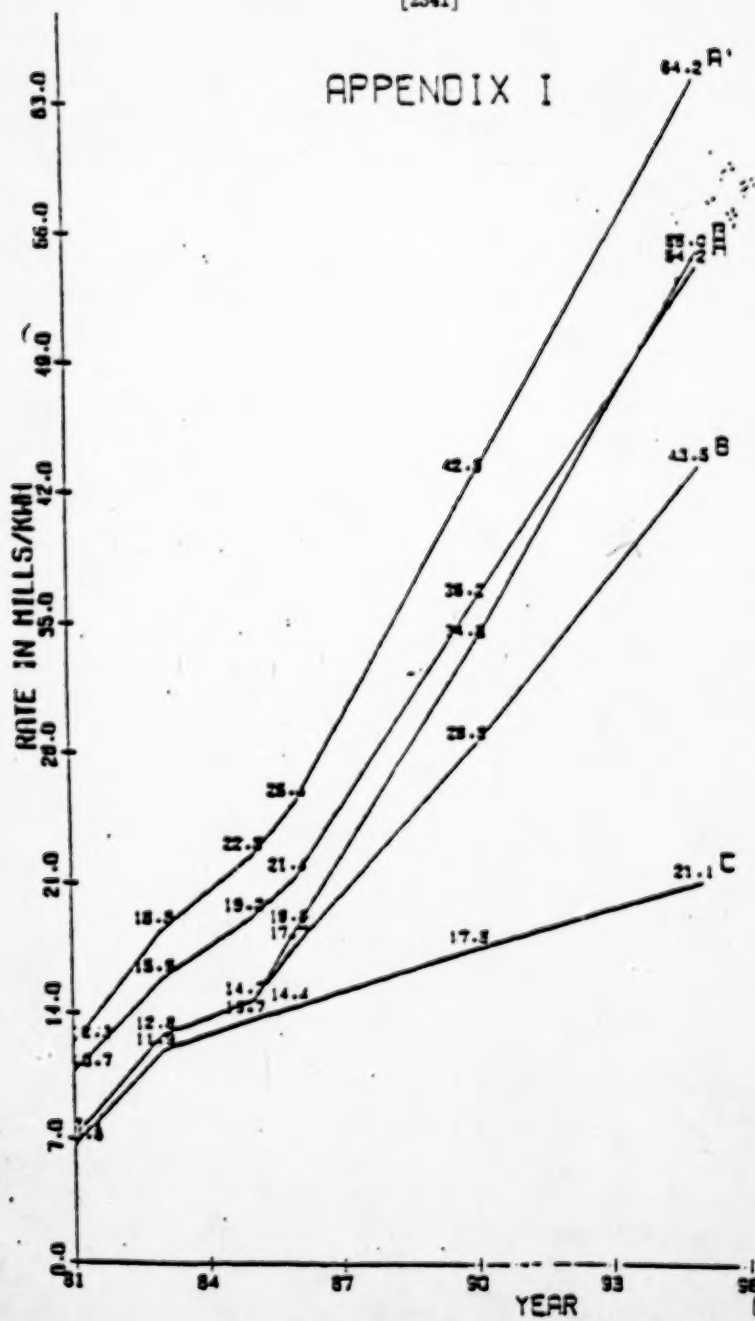
3 Enclosures

cc:

Congressman Jim Weaver

Mr. Manuel Lugan, Jr.

APPENDIX I



[2342]

APPENDIX II

Assumptions in Developing the Appendix I Graph.

The stream of numbers used to develop the Appendix I graph were obtained from the Rate Directives Analysis of the Pacific Northwest Electric Power Planning and Conservation Act. Specifically, A was obtained from line 66, B from line 34, and C from line 29. See the attached "Regional Program Study Case". B' was calculated by dividing the amount of mark up used to convert public utilities' industrial wholesale power costs into retail rates into line 62. The markup for 1986, 1990, and 1995 was 33%, 24%, and 15%, respectively. "Base Data" lists the inputs used in running the Rate Directives Analysis computer program that produced the attached "Regional Program Study Case". The "Assumptions Used in Development of the Base Data for Numerical Analysis" is precisely that. For further assumptions or a line by line explanation of the Rate Directives Analysis we refer you to the S. 885 legislative history Appendix B.

[2343]

Assumptions Used In Computing The Rates
Shown In Appendix I

RESOURCES

I. Federal Base System These amounts are estimates of the total Federal hydro and net-billed thermal power expected to be available for sale under the program. Federal base system power costs are derived by estimating the cost of transmitting Federal power on the BPA grid, the cost of generating Federal power from hydroelectric projects, and the cost of operating the net-billed thermal plants. The costs of these resources are spread over total estimated Federal energy resources including secondary resources in arriving at the expected

sales rate. The following schedule of future wholesale power rate increases was used to determine costs levels:

<u>Date of Rate Increase</u>	<u>Percent Over Previous Year's Rates</u>
July 1981	50
July 1982	20
July 1983	10
July 1984	5
July 1985	5
July 1986	5
July 1987	5
July 1988	5
July 1989	5
July 1990	5

After 1990, a 3.5-percent rate increase was assumed each year. These cost estimates include an additional six-month delay for completion of the WPPSS projects: No. 1, 12/85; No. 2, 7/83; and No. 3, 12/86. All cost estimates in the Regional Bill rate analysis are in current dollars of the fiscal year in which the rates will be in effect.

2. IOU Base System. These amounts are the IOU system resources planned to be in service by 1983. Prior to 1983, the level of resource was set equal to the IOU total system load. The rates associated with these resources are estimates of the average delivered cost, in the year shown, of all private utility resources expected to be operating by 1983.

The annual average system cost estimates for Washington Water Power through 1986 are at or below the exchange rate determined from the Federal base system costs. Therefore, the exchange with Washington Water Power does not commence until after 1986 and the IOU base system resources and cost estimates do not include Washington Water Power until after 1986.

3. PA Base System. Estimates of public agencies own system resources dedicated to their load as given in the

1979 Long-Range Projection of Power Loads and Resources for Resource Planning, West Group Area (Blue Book), excluding WPPSS Nos. 4 and 5.

[2344] 4. Incremental New Resource Costs. The incremental cost of new resources for each sample year was established for effective interest rates on the capital portions of 7.0, 7.25, 7.50, and 9.0 percent, all at 100 percent debt financing. The effective interest costs were derived from a Lehman Bros., Kuhn Loeb study, dated November 1978. Despite the current high interest rates, we feel these interest rates are still applicable in the long term. The public agency financing costs with regional backup (not Federal guarantee) were estimated at 7.00 percent; without regional backup, but all public agency and cooperative backup, at 7.25 percent. The IOU financing cost at 100 percent debt with regional backup was estimated at 9.00 percent.

The 7.50 percent effective interest rate for IOU new resources in the base case was determined by 100 percent debt at 9.0 percent interest less $\frac{1}{3}$ of the possible investment tax credits and rapid depreciation allowances assuming a 46 percent tax rate. A similar result is obtained from 90 percent debt at 9.0 percent interest (could include preferred stock) and 10 percent equity at 18.25 percent interest with $\frac{1}{2}$ of the available tax benefits. No credit was given for lower capital costs resulting from possible IOU advantages in construction. The capital and O&M costs exclusive of financing is estimated here to be the same for both public and IOU plants.

For 1985, the incremental costs of new resources were based on renewable resources that have short construction lead times. We assume the cost of conservation will be less than or equal to renewable resource costs. Renewable resources are the most feasible types of new resources which can be on line by 1985 (lead times for development of conventional thermal would take too long). Therefore, estimates of incremental costs for a typical wind gener-

ator, a typical mill-residue plant and a typical wood-residue plant were made for each of the interest rate levels for 1985. The resulting incremental costs were determined by weighting each of the costs of the three types of plant by $33\frac{1}{3}$ percent. The incremental cost of new resources for 1981 was an assumed spot-market price.

Reliable estimates of the costs of developing renewable resources ten or fifteen years from now are not available. Therefore, for 1990 and 1995, we used the costs of conventional thermal resources assuming that incremental costs for development of renewable resources and conservation in those years are equal to or less than conventional thermal resource costs in those same years. This results in a higher incremental cost of new resources in 1985 than determined for 1990, due to renewable resource technology still being in the developmental stage in the mid-1980's. Estimates of incremental costs for a typical nuclear plant, a typical mine-mouth coal plant, and a typical coal plant located at load center were made for each of the interest rate levels for 1990 and 1995. The resulting incremental costs for each year were determined by weighting the costs of the three types of plant—50 percent nuclear, $33\frac{1}{3}$ percent coal-fired (mine-mouth) and $16\frac{2}{3}$ percent coal-fired (load center).

The average new resource costs which appear in the study cases are calculated by bringing on resources in the initial year they are needed at the incremental cost of new resources in that year. One-third of the incremental cost is assumed to be O&M including fuel expense. The O&M portion is escalated from the year the resource is brought online at the same implicit price deflators used in deriving the Federal base system costs and the incremental cost of new resources. Therefore, the average cost of new [2345] resources in any year is a weighted average of already installed new resources with O&M escalated up to the given year and any additional new resources needed

costed at the incremental cost of new resources for that year.

The ratio of PA new resource development to IOU new resource development is assumed to be proportional to PA load growth and IOU load growth. The DSI growth was assumed to be met from PA and IOU resource development in proportion to their respective growth rates, and to include the full amount of all conditional allowances for technological improvement processes (not plant expansion).

5. Reserves.

a. The value of reserves provided by the right to interrupt the DSI load was calculated for each year in the following manner (no attempt was made to treat energy and capacity reserves separately):

(1) The average megawatts of regional reserves being provided are normally considered to be one-half the DSI load. A more precise estimate is determined by taking one quartile of the DSI load plus whatever portion of the top quartile is assumed to be available in the given year.

(2) The average cost of each megawatt of reserves is estimated by determining the capital costs (no O&M) associated with all of the "new resources" that are in place in the given year and the total Federal Base System costs in that year.

(3) Applying the resultant average cost to the amount of reserves provided yields the total number of dollars associated with these reserves. The method described here does not establish the only way to evaluate the value of the reserves, but instead is an attempt to arrive at a reasonable estimate for purposes of this numerical analysis.

b. The amount of reserves applied to the preference customer rate limit computation is determined by:

(1) reducing the average cost of each megawatt of reserves by the ratio of the total rate limit load to the total program resources;

(2) reducing the megawatts of reserves provided by the DSIs by the percent DSIs within or adjacent to preference customers (85 percent assumed);

(3) applying the average cost to the number of reserve megawatts.

c. The amount of Reserve Adjustment credited to the DSIs under this study of the program is equal to one-half of the total value of the reserves. Thus approximately one-half of the savings to the region, in not building standby generation reserves, was credited to the DSIs for providing these reserves, and the remaining one-half was shared among the region's firm loads including 50 percent of the DSI load. The crediting of 50 percent of the value of the reserves to the DSIs does not set a precedent for future BPA rate cases. The form of availability credit or other reserve credit mechanism to be applied is not meant to be specified or prejudiced by the assumptions that are here.

[2346]

LOADS

6. IOU. Forecasts for both the domestic and rural loads as well as the commercial and industrial loads were provided by representatives of the IOUs. Loads shown are for both east group and west group utilities.

7. PA. Total load forecasts are taken from the 1979 Blue Book. Net requirements on BPA are derived by netting the PA base system resources from their total load.

8. FA. Forecasts taken from 1979 Blue Book.

9. DSI. Forecasts taken from 1979 Blue Book, and based on DSI contract entitlement, assuming full qualification for technological improvement allowances.

[2347]
REGIONAL PROGRAM STUDY CASE
79 DATA NEW PNUCC LOADS
CASE NO. 38

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH
1. Regional Loads:												
2. Preference												
Customers Total	6,812		7,383		7,931		8,284		9,782		11,954	
3. Own Resources	2,098		2,219		2,368		2,348		2,377		2,389	
4. Net Requirements												
Federal Agencies	4,714		5,164		5,563		5,936		7,405		9,565	
5. IOU Total	218		240		256		266		289		310	
6. Own Resources	7,463		8,124		8,814		9,156		11,712		13,632	
7. Net Requirements	7,463		8,124		8,124		8,124		9,086		9,886	
8. IOU Res. & Fam.	0		0		690		1,032		2,626		4,546	
Farm Irrigation	3,359		3,670		3,986		4,141		5,319		6,061	
10. DSI 75%	2,601		3,018		3,077		3,107		3,227		3,374	
11. 25%	1,066		1,058		1,078		1,088		1,127		1,176	
12. Total	3,667		4,076		4,155		4,195		4,354		4,550	
13. NEI Requirements on BPA												
14. Total	8,599		9,480		10,664		11,429		14,674		18,971	
15. W/O DSI 25%	7,533		8,422		9,586		10,341		13,547		17,795	
16. Preference Customer Rate Limit:												
17. Resources:												
18. Federal Base System	8,049		8,668		9,351		9,393	14.4	9,432	17.5	9,454	21.1
19. Additional Resources	0		201		0		375	84.2	1,963	83.2	4,289	101.3

REGIONAL PROGRAM STUDY CASE—(Continued)
79 DATA NEW PNUCC LOADS
CASE NO. 38

		1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
		MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH
20.	Reserve Costs								2.5		3.4		4.1
21.	Total	8,049		8,869		9,351		9,768	19.6	11,395	32.2	13,743	50.2
22.	Loads:												
23.	Pref. Customer Net Require- ments	4,714		5,164		5,563		5,936		7,405		9,565	
24.	Federal Agencies	218		240		256		266		289		310	
25.	85% DSI	3,117		3,465		3,532		3,566		3,701		3,868	
26.	Total	8,049		8,869		9,351		9,768		11,395		13,743	
27.	Regional Rate:												
28.	Resources:												
29.	Federal Base System	6,612	6.6	7,973	11.9	9,406	13.7	9,787	14.4	9,516	17.5	9,454	21.1
30.	IOU Exchange	0		0		0		556	25.7	3,497	38.9	6,061	59.2
31.	New Resources	0		0		0		0		0		421	100.2
32.	Revenue Adj.								1.5		3.7		4.0
33.	Reserve Adj.		.5		.9		1.0		1.1		1.5		1.9
34.	Total	6,612	7.1	7,973	12.8	9,406	14.7	10,343	17.7	13,013	28.5	15,936	43.5
35.	Loads:												
36.	Preference Rate Credits												
37.	Preference Customers	4,714	7.1	5,164	12.8	5,563	14.7	5,936	17.7	7,405	28.5	9,565	43.5
38.	Federal Agencies	218	7.1	240	12.8	256	14.7	266	17.7	289	28.5	310	43.5
39.	Preference Rate Adj.												

REGIONAL PROGRAM STUDY CASE—(Continued)

79 DATA NEW PNUCC LOADS

CASE NO. 38

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH
40. IOU (Resid. & Irrig.)	1,680	7.1	2,569	12.8	3,587	14.7	4,141	17.7	5,319	28.5	6,061	43.5
[2348]												
41. New Resources Rate:												
42. Resources:												
43. Federal Base System	1,508	6.6	695	11.9	180	13.7	0		0		0	
44. IOU Exchange	1,680	18.4	2,569	20.4	3,587	23.3	3,585	25.7	1,822	38.9	0	
45. New Resources	0	70.0	0	77.5	0	79.5	554	82.3	4,031	61.6	8,341	100.2
46. Total	3,188	12.8	3,264	18.6	3,767	22.9	4,139	33.3	5,853	68.3	8,341	100.2
47. Loads:												
48. Regional Rate	0		0		0		0		0		421	100.2
49. Reserve Adj.		.4		.6		.7		.8		1.0		1.3
50. DSI 75%	2,601	13.2	3,018	19.2	3,077	23.5	3,107	34.0	3,227	69.4	3,374	101.4
51. Reserve Adj.		.5		.9		1.0		1.1		1.5		1.9
52. Revenue Adj.								1.5		3.7		4.0
53. Pref. Rate Adj.												
54. IOU Load Growth	0		0		690	23.9	1,032	35.9	2,626	73.6	4,546	106.0
55. Excess Resources	587	13.3	246	19.5	0		0		0		0	
56. Total	3,188		3,264		3,767		4,139		5,853		8,341	
57. IOU Exchange Rate:												
58. Base Resources	7,463	18.4	8,124	20.4	8,124	23.3	8,124	24.4	9,086	28.9	9,086	35.7
59. New Resources Rate	0		0		690	23.9	1,032	35.9	2,626	73.6	4,546	106.0
60. Total	7,463	18.4	8,124	20.4	8,814	23.3	9,156	25.7	11,712	38.9	13,632	59.2

REGIONAL PROGRAM STUDY CASE—(Continued)

79 DATA NEW PNUCC LOADS

CASE NO. 38

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH
61. DSI:												
62. Loads	3,187	12.0	3,600	18.0	3,670	22.0	3,923	24.8	4,072	42.1	4,256	63.3
63. Reserve Credit		-1.5		-2.6		-3.3		-3.9		-6.7		-10.0
64. Reserve Adj.		.3		.5		.5		.6		.8		.9
65. Pref. Rate Adj.												
86. Net	3,187	10.7	3,600	15.9	3,670	19.2	3,923	21.4	4,072	36.2	4,256	54.2
67. IRE	480	87.5	476	96.9	465	99.4	272	102.9	282	102.0	294	125.2
68. Composite	3,667	20.8	4,075	25.3	4,155	28.5	4,195	26.7	4,354	40.4	4,550	58.8
69. Summary:												
70. Pref. Cust. From Program	4,714	7.1	5,164	12.8	5,563	14.7	5,936	17.7	7,405	28.5	9,565	43.5
71. Fed. Agency Cust.	218	7.1	240	12.8	256	14.7	266	17.7	289	28.5	310	43.5
72. IOU (Resid. & Irrig.)	3,359	12.8	3,670	15.1	3,986	15.5	4,141	17.7	5,319	28.5	6,061	43.5
73. IOU (Comm. & Ind.)	4,104	18.4	4,454	20.4	4,828	23.3	5,015	25.7	6,393	38.9	7,571	59.2
74. IOU Composite	7,463	15.9	8,124	18.0	8,814	19.8	9,156	22.1	11,712	34.2	13,632	52.2

[2349]

BASE DATA

	1980-81		1982-83		1984-85		1985-86		1989-90		1994-95	
	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH	MW	M/KWH
Resources:												
Federal Base System	8,120	6.6	8,668	11.9	9,586	13.7	9,787	14.4	9,516	17.5	9,454	21.1
Secondary	1,434		1,561		1,779		2,070		2,420		2,420	
IOU Base System	7,463	18.4	8,124	20.4	8,124	23.3	8,124	24.4	9,086	28.9	9,086	35.7
PA Base System	2,068	3.3	2,219	3.4	2,368	3.6	2,348	3.7	2,377	4.0	2,389	4.6
Incremental New Resource Cost (100 percent debt):												
7 percent		70		76		78		80		67		99
7.25 percent		70		77		79		82		69		101
7.50 percent		70		79		81		84		71		103
9 percent		70		83		85		88		74		109
Value of Regional Reserves (millions)		83.4		164.4		209.6		268.0		479.6		748.8
Reserve Adjustment Credit to DSIs Under Program (\$ millions)		41.7		82.2		104.8		134.0		239.8		374.4
Loads:												
PNUCC Loads:												
IOU D+R	3,359		3,670		3,986		4,141		5,319		6,061	
IOU C+I	4,104		4,454		4,828		5,015		6,303		7,571	
IOU Total	7,463		8,124		8,814		9,156		11,712		13,632	
PA—Total	6,812		7,383		7,931		8,284		9,782		11,064	
PA Net Requirements	4,714		5,164		5,563		5,936		7,405		9,565	
FA—Total	218		240		256		266		289		310	
DSI 75%	2,601		3,018		3,077		3,107		3,227		3,374	
DSI 25%	1,066		1,058		1,078		1,088		1,127		1,176	
DSI Total	3,667		4,076		4,155		4,195		4,354		4,550	

[2350]

APPENDIX III

Senate Bill 885 allows BPA to restrict or withdraw substantial amounts of the DSI power supply in order to provide a portion of the region's power system reserves.

The new DSI contracts under the legislation will provide capacity reserves similar to those provided in the present contracts. Fifty percent of the then-operating DSI load may be restricted for a period of up to two hours to provide a forced outage or peaking power reserve. One hundred percent of the DSI load may be restricted by BPA for up to five minutes whenever frequency problems arise on the regional grid.

The DSIs will also provide two types of energy reserves. Approximately twenty-five percent of the DSI load is to be treated as a firm load for purposes of resource operation and will provide an operating reserve that may be restricted by BPA at any time in order to protect the Administrator's firm loads within the region and for any reason, including low or critical streamflow conditions and unanticipated growth of regional firm loads. An additional twenty-five percent of the DSI load will be treated as a firm load for both planning and operating purposes and will provide a planning reserve to protect the Administrator's firm loads against the delayed completion or unexpectedly poor performance of regional generating resources or conservation measures implemented or acquired by BPA.

Appendix J

CONGRESSIONAL RECORD—SENATE

November 19, 1980 (daily ed.)

Page S 14690

Mr. JACKSON. Mr. President, S. 885, the Pacific Northwest Electric Power Planning and Conservation Act, now pending before the Senate is the product of more than 5 years of public debate, hard work, and cooperation among a wide variety of regional interests and bipartisan congressional efforts to develop workable solutions to extremely complex utility planning problems. The bill before us is the result of a legislative process of consensus and compromise in which an effort has been made at every stage to accommodate the views of every interest group and every member of the Northwest delegation to the maximum extent possible. The Northwest power bill has been the subject of closer legislative scrutiny than any regional legislation in my memory. I believe that the bill has benefited at every stage of the legislative process from the careful attention which has been devoted to every detail and I am proud to be associated with the end product of this process.

. . .

. . . we are on the verge of a decade-long legal and administrative battle over the allocation of the large but limited pool of low-cost Federal power. Unless the allocation issue is resolved promptly through legislation, no utility will be able to dependably plan its future [S 14691] needs and power supply. The ultimate division of the limited Federal resource depends on unpredictable variables such as the outcome of the BPA allocation proceeding, legal challenges to that decision, new preference customer formations, and efforts by big industrial users to become customers of preference customers.

The only effective and workable way to resolve this dilemma is to expand the resource pool through BPA pur-

chase authority and to legislatively allocate its costs among customer groups. This eliminates the need to fight over a limited resource and the uncertainty about the outcome of that battle which prevents rational utility planning at present.

... In the absence of legislation resolving the allocation issue, the whole fabric of the utility industry and the Northwest economy will be in turmoil for a decade.

. . .

The rate provisions of the bill make it possible to immediately extend the economic benefits of low-cost Federal power to consumers served by investor-owned utilities; this is accomplished by raising rates to the aluminum companies. At the same time, preference customers rates are limited by a "rate ceiling" to no greater than what they would have been without the bill.

. . .

I would like to make one clarifying comment on the Senate report on S. 885. Due to a printing error the character of the direct service industry reserves was described in Senate Report 96-272 in a manner which caused some uncertainty and confusion. The DSI reserves were correctly described in the House Interior Committee report on S. 885 and as far as I am concerned that report accurately reflects the position of the Senate on this point.

[S 14698]

Mr. McCLURE:

. . .

I would also like to correct an error which was printed in the Senate report on S. 885 regarding direct service industry reserves. These reserves, discussed in section 5(d), are described accurately, and in some detail, in the House Interior Committee report and I direct attention to that report for its description of the reserves.

Appendix K

[6748]

**INDUSTRIAL CUSTOMERS [Letterhead]
of Bonneville Power Administration**

**Suite 464 Lloyd Building • 700 N.E. Multnomah Street
Portland, Oregon 97232
(503) 233-4445**

February 12, 1981

**TO: Don Franzwa (BPA)
Merrill Schultz (ICP)
Chip Greening (PPC)
Rob Marritz (PNUCC)**

FROM: Eric Redman

**RE: *BPA Obligations With Respect To The DSI Top
Quartile***

At the DSI contract negotiation session on Tuesday, February 10, a question was asked about the origin of the paragraph in Appendix B of the Senate Report (at page 59) describing the system operation contemplated to support treatment of the top quartile as a firm load for purposes of resource operation.

The attached excerpts from Bonneville's successive "Analysis of Rate Directives" (Fall 1978, February 1979 and July 1979) for S.3418 and S.885 show the development of the paragraph, including the changes that were made in it in response to suggestions from the publics, IOUs and DSIs. The "Analysis" was circulated in each draft to all BPA customers, and was also distributed at BPA's informational meetings on the legislation. The July 1979 "Analysis", after additional alterations at the request of each of the customer classes, is what was printed in the Senate Report as Appendix B.

[Appendix B, Senate Report, Aug. 1979]

[6749]

3. *Direct-Service Industry (see proposed amendment)*

a. *Rate Availability.* This rate applies to all "Industrial Firm" sales to BPA's direct-service industries which provide planning and operating reserves. The quantity of power for rate purposes is based on the proportion of the total industrial requirement, on a long-term average (currently estimated to be between 85 percent and 96 percent of the total DSI load), that BPA projects it will be able to serve directly. This projected availability is predicated on the continued planning and development of "firm" resources under critical stream-flow conditions to carry 75 percent of the total DSI requirements. The balance would be served with resources which are in excess of critical planning amounts but operated to meet the entire DSI load as if it were firm. The operation of the System to carry out this purpose results from treating as a firm load the maximum amount of the DSI load (not all of which can be covered under critical streamflow planning), to the extent that this maximum load can be met in the initial period of the PNW Coordination Agreement Critical Period while protecting firm loads against the worst historical streamflow and maintaining an ability to restrict an equivalent amount of the DSI Loads in the later periods (without provisional or advance energy being made available for this amount of the DSI load). Further, in actual operation DIS power withdrawn or curtailed in excess of interruptions for critical streamflows would be replaced by power purchased by BPA on a short-term basis, if available. The projected amounts estimated for the purposes of this analysis recognize the currently projected resource deficits. However, it assumes that by 1985 under the proposed legislation the System would be in load/resource balance.

. . .

Fall 1978

The greatest opportunity for a change in the prospective industrial firm sales is in operations affecting the predictable supply to the DSI load and in a corresponding increase in the reserves they provide. By treating the entire DSI load as a firm load, subject to interruption in favor of other firm loads in the region, the DSIs will receive service which is closer to full service under many more operating conditions than they do at present. The DSI load is uniquely able to be considered in this fashion because they can borrow on the expectation of better than critical streamflows or resource production, yet stand ready to curtail their loads beyond the normal reserve requirement in order to protect continued service to regional firm loads. The expected increase in industrial firm supply on a long-term average is from a present 75% industrial firm with 14% additional nonfirm sales to nearly 96% industrial firm service.

Feb., 1979

4. *Direct-Service Industry* (see proposed amendment)

a. *Rate Availability.* This rate applies to all "Industrial Firm" sales to BPA's direct-service industries providing planning and operating reserves. The amount of the sale is limited to the rate, calculated based on the proportion of the total industrial requirement, on a long-term average (currently estimated to be between 85% and 96% of the total DSI load), that BPA projects it will be able to serve directly. This projected availability is predicted on the continued planning and development of "firm" resources under critical streamflow conditions to carry 75% of the total DSI requirements. The balance would be served with resources which are in excess of critical planning amounts but operated to meet the entire DSI load as if it were firm.

July, 1979

3. *Direct-Service Industry* (see proposed amendment)

a. *Rate Availability.* This rate applies to all "Industrial Firm" sales to BPA's direct-service industries which provide planning and operating reserves. The quantity of power for rate purposes is based on the proportion of the total industrial requirement, on a long-term average (currently estimated to be between 85% and 96% of the total DSI load), that BPA projects it will be able to serve directly. This projected availability is predicated on the continued planning and development of "firm" resources under critical streamflow conditions to carry 75% of the total DSI requirements. The balance would be served with resources which are in excess of critical planning amounts but operated to meet the entire DSI load as if it were firm. The operation of the System to carry out this purpose results from treating as a firm load the maximum amount of the DSI load (not all of which can be covered under critical streamflow planning), to the extent that this maximum load can be met in the initial period of the PNW Coordination Agreement Critical Period while protecting firm loads against the worst historical streamflow and maintaining an ability to restrict an equivalent amount of the DSI Loads in the later periods (without provisional or advance energy being made available for this amount of the DSI load). Further, in actual operation DSI power withdrawn or curtailed in excess of interruptions for critical streamflows would be replaced by power purchased by BPA on a short-term basis, if available. The projected amounts estimated for the purposes of this analysis recognize the currently projected resource deficits. However, it assumes that by 1985 under the proposed legislation the System would be in load/resource balance.

Appendix L**CONGRESSIONAL RECORD—HOUSE**

November 17, 1980 (daily ed.)

Page H 10677

Mr. FOLEY. Mr. Speaker, I rise in strong support of S. 885. The issues of this bill have been debated in two of our major committees and two of the subcommittees of those committees.

This bill has been before the Congress for many years. It is essential to allocate Federal power in the Northwest, either by this legislation or by administrative action which will surely lead to a long decade of bitter litigation.

* * *

Mr. Speaker, like many of the other supporters of this legislation, my reasons for strongly urging the passage of the Northwest power bill are set forth in greater detail in the RECORD of September 29, 1980. But today, with final passage of S. 885 imminent, I want to emphasize a few important points.

This legislation is needed because of a Federal problem—the unavoidable need to reallocate Federal power sold by the Bonneville Power Administration (BPA). Because BPA's power supply is fixed in amount under present law, and because all that power is already allocated under contracts that begin expiring in May 1981, a reallocation of this power by some Federal entity cannot be avoided. The only issue is whether to carry out the necessary reallocation through Federal legislation, or to permit the reallocation to be carried out by a Federal administrative agency (BPA) and the Federal courts.

If any of the bill's supporters believed that an administrative and judicial reallocation could be carried out without severe disruption of the Northwest economy and

without harmful ripple effects that would be felt throughout the Nation, none of us—none of us—would have undertaken the incredibly arduous effort to pass this bill. But an administrative reallocation, litigated in the Federal [H 10678] courts for perhaps a decade, simply will not work. And this is what makes the legislation necessary.

. . .

But the simple fact is that until the allocation crisis is solved, the Northwest cannot move effectively, efficiently and in an environmentally sound manner to cure the impending power shortage, which by some estimates is now enormous. Because solving the shortage requires cooperation among dozens of diverse Northwest entities, and these entities cannot cooperate effectively so long as they are in court fighting one another on the issue basic to their survival, namely their power supply contracts.

It is said that this bill will not prevent litigation. That is certainly true. There may be litigation over rates, over new resources, and over the meaning of many provisions that have been added to the bill largely in order to reassure the bill's critics. But the key point is that litigation under this bill will not include litigation to determine the validity of each entity's new power supply contract.

On the contrary, by stating that BPA shall be "deemed" to have sufficient power to enter into all the 20-year power sales contracts mandated by the legislation, the bill specifically ensures that these new contracts will be valid against legal challenge. This provision does not "guarantee" actual power deliveries in day-to-day operation, but it does guarantee that whatever litigation occurs on power matters will not be litigation going to the heart of any BPA customer's power sales contract and power allocation—the most important single result of this legislation.

Appendix M

Cover Letter by
BPA Administrator
Offering New DSI Contracts

DEPARTMENT OF ENERGY [Letterhead]

Office of the Administrator
Bonneville Power Administration

P.O. Box 3621
Portland, Oregon 97208

In reply refer to: PCI
August 27, 1981

Dear Mr.

In response to your request to be offered the power sales contract under the Pacific Northwest Electric Power Planning and Conservation Act, this written offer is sent to you for your consideration.

The enclosed four copies of the initial long-term power sales contracts are the result of the negotiation process just completed. Please note that the Bonneville Power Administrator has already signed this contract. The signed contract constitutes a firm offer as required by the Regional Act. Your Company has one year from the date it receives this offer to accept it by signing and returning the contract to Bonneville.

. . .

This contract is the initial contract that Bonneville is required to offer each Industrial Purchaser pursuant to sections 5(d)(1)(B) and 5(g) of the Regional Act. As you know, the Act contemplates in section 5(d)(1)(B) additional, future contracts with each existing Industrial Purchaser, but unlike this initial contract, such future contracts do not have the benefit of the statutorily deemed sufficiency of power available to the Administrator under

section 5(g)(7). Bonneville's ability to offer any future contracts to its nonpreference customers, including the Industrial Purchasers, is therefore largely dependent upon Bonneville achieving firm load/resource balance while these initial contracts are in effect. Bonneville is aware that most, if not all, of the Industrial Purchasers are necessarily considering substantial new capital investment at their existing facilities during the period of the initial contracts, and that as a result the useful life of these facilities may be extended well beyond the 20-year term of the initial contracts. We hope you will find section 12 of the attached contract responsive to some of the concerns that have been expressed as to Bonneville's recognition of your need for future, as well as immediate, power planning certainty. We would certainly expect future Bonneville officials to recognize this need as well. At the same time, Bonneville's obligation to maintain load/resource balance through the efforts of its Customers and other non-Federal entities, and the goal of achieving load/resource balance in making possible future contracts and a continuing program under the Regional Act, needs to be borne in mind by the Customers as well as by Bonneville.

. . .

If your Company finds the provisions of the contract and the above condition acceptable, please have the appropriate officials sign this contract and the copy of this letter and fill in the execution date of the contract on page 2. Please return one copy of each document to Bonneville and keep remaining copies for your files.

M-3

Please contact our office if you have any questions.

Sincerely,

/s/ PETER T. JOHNSON
Administrator

Enclosures

Company

Executed by

Title

Appendix N

DSI Contract, (1975)

POWER SALES CONTRACT

executed by the

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

acting by and through the

BONNEVILLE POWER ADMINISTRATOR

and

KAISER ALUMINUM & CHEMICAL CORPORATION

Index to Sections

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6. Provisions Relating to Delivery	7
7. Use of Power	8

. . .

[6278]

4. *Sale of Power and Amount Sold.*

(a) Subject to the other provisions of this contract, the Administrator shall make available to the Purchaser at the points of delivery hereinafter described, and the Purchaser shall purchase from the Administrator, Industrial Firm Power (as defined in section 1.4 of Exhibit B) in the following amounts for the respective periods indicated, which amounts shall constitute the Purchaser's contract demands for Industrial Firm Power for such periods:

(1) 665,100 kilowatts for the period between the effective date hereof and 2400 hours on August 31, 1977;

(2) 697,000 kilowatts for the period between 2400 hours on August 31, 1977, and 2400 hours on December 31, 1977;

(3) 707,000 kilowatts for the period between 2400 hours on December 31, 1977, and 2400 hours on December 31, 1979;

[6279]

(4) 708,300 kilowatts for the period between 2400 hours on December 31, 1979, and 2400 hours on June 30, 1980; and

(5) 715,100 kilowatts for the period between 2400 hours on June 30, 1980, and 2400 hours on December 31, 1994; *provided, however*, that 6800 kilowatts thereof, which are for Plant expansion, shall be subject to the provisions of subsection (b) below. [006279]

. . .

[6283]

7. *Use of Power.* The electric power and energy to be delivered to the Purchaser hereunder shall not be used by the Purchaser for purposes other than the production of aluminum and associated products, unless otherwise agreed to by the Administrator in an amendment to this contract. A breach of this section shall be deemed to be a material breach of this contract.

. . .

DSI RATE SCHEDULE—1975 CONTRACTS

[6285]

BONNEVILLE POWER ADMINISTRATION
UNITED STATES DEPARTMENT OF THE INTERIOR

SCHEDULE IF-1 WHOLESALE POWER RATE
FOR INDUSTRIAL FIRM POWER

(Effective December 20, 1974)

Section 1. AVAILABILITY:

This schedule is available for purchase of industrial firm power on a contract demand basis. This schedule is also available for purchase of an authorized increase of power on a contract demand basis.

Section 2. RATE:

The monthly rate for delivery of industrial firm power shall be as follows:

(a) For transmission system deliveries:

Demand charge: \$1.20 per kilowatt of billing demand

Energy charge: 1.525 mills per kilowatt-hour

(b) For at-site deliveries:

Demand charge: \$0.90 per kilowatt of billing demand

Energy charge: 1.525 mills per kilowatt-hour

Section 3. ADJUSTMENTS TO RATE:

The Administrator shall determine separately the annual availability of industrial firm power pursuant to section 1.4 and the availability of an authorized increase of power pursuant to section 1.5 of the General Rate Schedule Provisions. Based upon the annual availability of industrial firm power, the Administrator will credit the purchaser for that operating year from July 1 through June 30 an amount determined by multiplying the appropriate annual adjustment factor from the following table by one-twelfth the sum of the monthly billing demands in kilowatts for such operating year for industrial firm power prior to adjustment for

power factor. Based upon the availability of an authorized increase of power, the Administrator will credit the purchaser for that operating year an amount determined by multiplying the appropriate adjustment factor in the following table by one-twelfth the sum of the monthly billing demands in kilowatts for such operating year for such authorized increase prior to adjustment for power factor. Adjustment for the annual credits, if any, shall be made to the extent possible on the purchaser's June wholesale power bill. If the full credit cannot be effected on the June bill, the remaining credit will be given on subsequent bills. [6286] An appropriate adjustment will be made based on the availability calculated during the initial 6-month period of this rate schedule.

<u>Annual Adjustment Factor</u> <u>dollars per kilowatt</u>		<u>Annual Availability</u> <u>in percent</u>
	but less than	
95	100	2.00
90	95	4.90
85	90	6.60
80	85	7.70
75	80	8.30
70	75	8.60
under 70		9.00

• • •

GENERAL CONTRACT PROVISIONS—
1975 DSI CONTRACT

[6305]

8. *Restriction of Deliveries.*

• • •

(b) The Administrator may at any time restrict deliveries of Industrial Firm Power in amounts up to one-fourth of the contract demand therefor. . . .

• • •

[6310]

10. *Determination of Availability.* The determination of the availability credit provided for in the contract and section 3 of Exhibit A shall include the following:

(a) If in any Contract Year the Administrator makes Advance Energy available pursuant to section 31(a) hereof, such energy up to an amount which, including the application of the Replacement Correction Factor, the Administrator determines the Purchaser can replace by curtailing deliveries to 25 percent of its contract demand [6311] for Industrial Firm Power over a period which in the Administrator's judgment is the minimum period in which such replacement may be effected, shall be deemed to be deliveries of Industrial Firm Power pursuant to the contract, and annual availability of and payment for Industrial Firm Power pursuant to the contract and rate schedule shall reflect such deliveries.

(b) The Administrator shall notify the Purchaser when the quantity of Advance Energy provided for in subsection (a) above has been made available. If the Administrator offers to make additional Advance Energy available, the Purchaser shall have the option of accepting or rejecting the additional Advance Energy in whole or in part. Only such additional Advance Energy as the Purchaser accepts shall be deemed to be Industrial Firm Power delivered pursuant to the contract and shall be reflected in the annual availability and payment determinations pursuant to the contract and rate schedule.

(c) If pursuant to section 31(f) hereof the Purchaser, by curtailing Plant operation, makes available Advance Replacement Energy, the kilowatt-hours so made available shall be deemed to be a restriction in deliveries of Industrial Firm Power by the Administrator for the Contract Year in which such replacement is made and the annual availability and payment for Industrial Firm Power pursuant to the contract shall be appropriately adjusted to reflect such restriction.

(d) If the Purchaser's Plant is shut down in whole or in part because of a curtailment pursuant to section 7 hereof or a restriction pursuant to section 8 hereof, either alone or in combination with the exercise of the Purchaser's option pursuant to sections 7(d) or 8(a) hereof, as the case may be, the annual availability of and payment for Industrial Firm Power pursuant to the contract and rate schedule shall be appropriately adjusted to reflect the daily average of the measured demands during the period covered by the schedule submitted pursuant to sections 7(e) or 8(h) hereof, as the case may be, in lieu of the full amount previously curtailed or restricted .

(e) The annual availability of and payment for Industrial Firm Power pursuant to the contract and rate schedule shall be appropriately adjusted to reflect any restriction which continues pursuant to section 8(g) hereof.

(f) If deliveries of electric power and energy to the Purchaser are suspended, interrupted, interfered with or curtailed due to Uncontrollable Forces, as defined in section 15 hereof, on either the Purchaser's works, system or facilities, the Federal System, or any Transferor's system, or if the Administrator or any Transferor interrupts or reduces deliveries to the Purchaser for any of the reasons stated in section 16 hereof (Continuity of Service), the annual availability of and payment for Industrial Firm Power pursuant to the contract and rate schedule shall be appropriately adjusted. No interruption of less than one hour

duration will be considered for computation of such adjustments.

(g) If the Administrator restricts deliveries of Industrial Firm Power pursuant to section 8 hereof in any circumstances for which appropriate adjustments in the determination of annual availability of and payment for Industrial Firm Power are not provided for in subsection (c), (d) or (e) of this section, the annual availability of and payment for Industrial Firm Power pursuant to the contract and the rate schedule shall be appropriately adjusted to reflect such restriction.

[6312]

(h) The Purchaser's annual availability in percent for each class of power eligible for availability credit shall be determined separately for such class pursuant to the following formula:

$$A = \frac{(\text{Kilowatt-hours requested} - \text{Kilowatt-hours restricted}) (100)}{\text{Kilowatt-hours requested}}$$

where

A=Purchaser's annual availability in percent for such class of power.

Kilowatt-hours requested=the sum of the products obtained by multiplying the number of hours in each month of the year by the lesser of the contract demand or the curtailed demand for such class of power for such month.

Kilowatt-hours restricted=the sum of the products obtained by multiplying the number of hours in each period or restriction (excluding restrictions pursuant to section 8(e)(3) hereof and restrictions of less than one hour's duration) during the year by the number of kilowatts restricted in such period of restriction.

Appendix O

**STATEMENT OF
JACK A. SPEER**

**BEFORE THE
U. S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS SUBCOMMITTEE ON
WATER AND POWER RESOURCES**

**WASHINGTON, D. C.
SEPTEMBER 8, 1978**

Mr. Chairman and Members of the Committee, my name is Jack Speer. I am the Northwest Power Manager of the Aluminum Division of The Anaconda Company. Anaconda operates a primary aluminum smelter in Columbia Falls, Montana, which relies upon electrical power purchased as a direct service industry (DSI) from the Bonneville Power Administration.

I had the pleasure of addressing Senator Melcher on May 19, this year, in Billings at a hearing concerning S2080, and I am also pleased to be before you today to discuss HR13931. At the May hearing I pointed out a few important facts about the Northwest aluminum industry which I believe are worth keeping in mind. The Northwest aluminum industry has kept power costs down in several ways. By our ability to reduce our loads when needed to protect the quality of power supply to other regional consumers, the DSI's have provided energy and capacity reserves that have eliminated the need for the construction of costly standby generation. By our presence, we have allowed earlier construction and optional sizing of generation plants and transmission lines. We have purchased millions of dollars worth of interruptible energy which would have otherwise been unuseable,

thereby adding to BPA revenues and reducing the necessity of BPA collecting revenues from other classes of BPA customers. We have traditionally paid average costs for our power even though BPA's cost of serving our loads has been below average.

For continued overall regional welfare, the Northwest needs additional energy reserves to protect against the schedule slippage of new generating plants. These reserves could be provided by the replacement of existing DSI contracts with new contracts which provide more reserves.

. . .

I concluded my May 19 statement by urging prompt legislative action so that the electrical energy problems we see on the horizon today will not become hardships on the Northwest tomorrow.

The problems I was concerned about then still exist today. Forecasts are predicting electrical energy shortages and BPA is proceeding with an allocation of its insufficient resources despite the fact that the result will most certainly be challenged in court and not resolved for many years. The residential customers of the investor-owned utilities within the BPA service area still do not receive the same benefits of the Federal system as do their counterparts served by publicly owned systems and as a result pay rates that are higher. Existing public agencies are unable to plan for their future power supply because of the allocation uncertainties. The City of Portland has filed suit to gain access to BPA power. The DSI's, representing 30 percent of the U.S. aluminum reduction capacity as well as other important products, cannot make plans because of uncertainties of future power availability much less cost. And, while this is going on, loads are growing without the influence of strong conservation measures and new resource schedules slip while interested parties argue whether or not they should be built.

Unless regional action is taken soon, electrical energy shortages even more severe than now forecasted will most certainly result as loads continue to grow faster than resources.

Unless action is taken soon, the City of Portland's law suit and Oregon's Domestic and Rural Power Authority will draw the regions' energies toward fighting for available power in the legal arena instead of working together to see that loads and resources are planned and balanced for the over-all benefit of the Northwest.

Unless action is taken soon, BPA's Direct Service Industries such as my own Company, Anaconda, will have to make choices as to their future power supplies which most likely will result in the loss to the region of the reserves provided; also, law suits against BPA or other utilities if service is denied at reasonable rates and perhaps the forced closure of some industries with loss of jobs, economic base, tax revenues, production of needed materials and other social and economic benefits.

You may have heard that the Chinese ideogram for "crisis" is composed of the symbols for "danger" and "opportunity." The Northwest electrical energy situation is an impending crisis and I believe it has elements of both danger and opportunity. We face great danger if we do not solve our problems and balance our supply and demand for electrical energy, and at the same time we have the opportunity to create a system that will reduce the amount of new generation necessary while making adequate energy at reasonable costs available to meet our real needs.

But, if we fail to take prompt action, we will lose our opportunity because of the activities already underway which will make a legislative solution to these problems almost impossible. We will be left only with the danger.

The DSI's need an assured long-term power supply and one that is at a cost that allows us to be competitive with other North American and foreign producers.

. . .

HR13931 would give the DSI's some assurance of power supply. Under it, BPA would offer new long term contracts to us and would be mandated to see that loads and resources were balanced through:

- (1) Cost effective conservation
- (2) Acquiring other electrical power resources giving priority to high efficiency resources such as combined cycle and MHD.
- (3) Acquiring energy from waste heat, cogeneration or renewable resources.
- (4) Constructing renewable energy sources other than hydro.
- (5) Acquiring power from other entities to replace power interrupted by BPA.

This is the type of action necessary to give us the power assurance we and all other customers in the Northwest need, and at the same time give proper weight to our environment and avoid waste.

BPA's treatment of all our loads as firm except when interruptions are necessary to protect other firm loads will provide us with more useable energy, still protect firm loads and at the same time reduce spillage of valuable water.

. . .

Appendix P

**DEPARTMENT OF THE INTERIOR
(DES-77-21)**

DRAFT ENVIRONMENTAL STATEMENT

**The Role Of The Bonneville Power Administration
In The Pacific Northwest Power Supply System,
Including Its Participation
In The Hydro-Thermal Power Program:
A program Environmental Statement
and Planning Report**

**Appendix A
BPA Power Resources, Acquisitions,
Planning and Operations**

**Prepared By
Bonneville Power Administration
Department of the Interior
(July 22, 1977)**

**DONALD PAUL HODEL
Administrator**

. . .

The NWPP criteria require each member to maintain operating reserve on its system at all times. The amount of operating reserve each NWPP member system must maintain currently is equal to 5 percent of its hydro generation, plus 7 percent of the thermal generation it is using at the time to supply its load requirements. At least half of each system's operating reserve must be maintained as spinning reserve.

[excerpt from page II-71]

. . .

Appendix Q

Pub. L. 87-701 § 112(e)

(Sept. 26, 1962)

76 Stat. 604

• • •

Sec. 112

• • •

(e) The Commission shall not enter into any arrangements for the sale of byproduct energy from the Hanford New Production Reactor unless it determines that the purchaser has offered fifty per cent participation to private organizations and fifty per cent participation to public organizations on a non-discriminatory basis in the sale of electric energy generated therewith.

• • •

Appendix R

List of DSI Parents, Subsidiaries, and Affiliates

Alumax Pacific Corporation:

AMAX, Inc.
Mitsui & Co. Ltd.
Nippon Steel Corporation

Aluminum Company of America:

ALCOA.

ARCO Metals Company:

Atlantic Richfield Company (Arco)
ABE Beverage, Inc.
Alpart Forms (Jamaica), Ltd.
Alyeska Pipeline Service Company
Anaconda-Ericsson, Inc.
Anaflex, S.A. De C.V.
ARCO Australia Coal Pty., Ltd.
ARCO Solar Europe, Inc.
ARCO Solar Europe, S.p.A.
ARCO Solar Nigeria, Ltd.
Arlian, S.A. De C.V.
Arpet Petroleum Limited
Atlantic Richfield De Mexico, S.A. De C.V.
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Ltd.
The British American Metals Company, Ltd.
Candel International Limited
Caribou-Chaleur Bay Mines, Ltd.
Caribou-Smith Mines Ltd.
Centroamericana De Cobre, S.A.
Chile Copper Company
Cobre De Hercules, S.A.
Cobre De Mexico, S.A.

Cobrecel, S.A. De C.V.
Colonial Pipeline Company
Compania De Petróleo Ganso Azul, Ltda.
Compania Minera de Cananea, S.A.
Compania Minera Don Ricardo, S.A. de C.V.
Compania Minera Dos Republicas, S.A. de C.V.
Compania Minera Kappa, S.A.
Companie Minera Penacobre, S.A.
Cook Inlet Pipe Line Company
Cupro San Luis, S.A. de C.V.
Defender Mining and Milling Corp.
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
Dragon Consolidated Mining Company
East Texas Salt Water Disposal Company
85819 Canada Limited
Empresas de Comercio Exterior Mexicano, S.A. de C.V.
Energy Transportation Systems, Inc.
F.T.L. Company Limited
Gravity Adjustment, Inc.
Greater Pacific Limited
Hardy Oil Company
Imperial Eastman de Mexico, S.A.
Impulsora de Cobre, S.A. De C.V.
Industrias Nacobre, S.A. De C.V.
Industrias Tecnos, S.A. De C.V.
Iricon Agency, Ltd.
Jamaica Aluminum Security Company, Ltd.
Kenai Pipe Line Company
Kronos Computacion Y Teleproceso, S.A. De C.V.
Las Quintas Serenas Water Company
Lavan Petroleum Company
Lingobronce, S.A.
Manguera Felix, S.A. De C.V.
Manufacturera Mexicana De Partes Para Automoviles,
S.A. De C.V.
Mayflower Mining Company

Middle Swansea Mining Company
 R.W. Miller (Holdings) Limited
 Mineracao Anaconda Brasil Ltda.
 Montoro, Empersa Para La Industria Quimica, S.A.
 Nacional De Cobre, S.A.
 New Bingham Mary Mining Company
 Nihon Oxirane Company, Ltd.
 Nordisk Mineselskab A/S
 North Lilly Mining Company
 Oil Shippers Service, Inc.
 P.T. Arutmin Indonesia
 Park Cummings Mining Company
 Park Premier Mining Company
 Participaciones Mexicanas, S.A. De C.V.
 Patten Mining Company
 Platte Pipe Line Company
 Prince Consolidated Mining Company
 Productos Especiales Metalicos, S.A.
 Richfield U.K. Petroleum, Limited
 Rodman, Inc.
 The Saudi Cable Company
 Servicios Industriales Nacobre, S.A. De C.V.
 Sinclair Venezuelan Oil Company
 Smoke House Copper Mining Company
 Sociedade Anonima Marvin
 Solvamex, S.A. De C.V.
 Swecomex, S.A.
 Tecumseh Pipe Line Company
 Trans-New Mexico Pipe Line Company
 Trans Mountain Oil Pipe Line Company Ltd.
 Tubos Flexibles, S.A.
 Union de Credito Industrial Vallejo, S.A.
 United Park City Mines Company
 The Walworth Company
 West Mayflower Mining Company
 William Prym de Mexico, S.A.

The Carborundum Company:

Kennecott Corporation, a wholly-owned subsidiary of
Standard Oil Company of Ohio

Crown Zellerbach:

None listed

Georgia-Pacific Corporation:

Compania de Navegacion Arboreous, S.A.
P.T. Georgia-Pacific Indonesia
P.T. Kalimanis-Plywood Industries
Thacker Land Company

Hanna Nickel Smelting Company:

Hanna Mining Co.

Intalco Aluminum Corporation:

AMAX, Inc.
Howmet Aluminum Corporation
Howmet Corporation
Mitsui & Co. Ltd.
Nippon Steel Corporation
Pechiney Ugine Kuhlman
Pechiney Ugine Kuhlman Corporation

Kaiser Aluminum & Chemical Corporation:

Alpart Farms (Jamaica), Ltd.
Aluminium Bahrain
Aluminium Products Company Limited
Anglesey Aluminium Limited
Bauxita Da Amazonia Limitada
Boyne Smelters Limited
Ethiopian Potash Private Limited Company
Grundstucksverwaltungs Gesellschaft Objekt
Wallerstheim MBH
Hindustan Aluminium Corporation Limited
Hopewell International Company Limited
Jamaica Alumina Security Company, Ltd.

Kaiser Alluminio Italia S.R.L.
 Kaiser Aluminium Bahrain E.C.
 Kaiser Aluminium Huttenwerk GMBH
 Kaiser Aluminium Kabelwerk GMBH
 Kaiser-Teleprompter of Hawaii, Inc.
 Mineracao Do Jutai Limitada
 Mineracao Do Matapi Limitada
 Mineracao Do Prainha Limitada
 Oakland City Center Hotel Company, Inc.
 Phenix Aluminium Societe Anonyme
 Queensland Alumina Finance N.V.
 Queensland Alumina Holdings N.V.
 Queensland Alumina Limited
 Queensland Alumina Security Corporation
 Second Queensland Alumina Security Corporation
 Societe D'Etudes Des Bauxites Du Cameroun
 Societe Industrielle Phenix Aluminium S.A.
 Thai Metal Works Company, Ltd.
 Volta Aluminium Company Limited

Martin Marietta Aluminum Inc.:

Allied Corporation
 Champlin Petroleum Company, a wholly-owned
 subsidiary of Union Pacific Railroad Corporation
 Martin Marietta Corporation

Oregon Metalurgical Corporation:

Armco, Middletown, OH.

Pacific Carbide & Alloys:

None listed

The Pennwalt Corporation:

Centrifugas Peruanas, SA
 Decco-Roda, SpA
 Electroquimica Pennwalt, SA
 Industria Chimica del Ticino SpA
 Industria Chimica di Termoli, SpA

Industria Quimica Pennwalt, SA
 Japan Thiochemical Co., Ltd.
 Lucidol Yoshitomi, Ltd.
 MAIA, SpA
 Nitrogeno Industrial Y Alimenticio, SA
 Pennwalt Del Pacifico, SA
 Pennwalt, SA de C.V.
 Pennwalt Venezolana, CA
 Petroquimica Pennwalt, SA
 Quimetal, SA
 Quimica Pennwalt, SA
 Waltiernan Dormas (Pty), Ltd.
 Pan-Lux, SpA
 Pennwalt India, Ltd.

Reynolds Metals Company:

Alpart Farms (Jamaica), Ltd.
 Alumina Partners of Jamaica
 Altenwerder Hutten-Uad Walzwerk GnoH
 Aluminio del Caroni, S.A.
 Aluminio Reynolds del Peru Sociedad Anonima
 Aluminio Reynolds, S.A.
 Aluminio Reynolds, Santo Domingo S.A.
 Aluminium Oxid Stade Gesellschaft mit heschränkter
 Haftung
 Aluminium Corporation of the Philippines
 Association Venezolana de Adiestramiento y
 Desarrollo del Aluminio (AVADAL) (AC)
 Barrstone Associates—Partnership
 Bennett Manor Associates—Partnership
 Bushnell Plaza Apartments—Partnership
 Bushnell Plaza Development Corporation—
 Partnership
 Cathedral Square Associates—Partnership
 Cathedral Square Associates II—Partnership
 Chace Investors Joint Venture (AC)
 City Venture Corporation

Crown Oak Associates, Limited—Partnership
 Curtis Apartment Associates—Limited Partnership
 Cypress Court Associates—Limited Partnership
 Eastwick Joint Venture (AC)
 Eastwick Joint Venture II—Limited Partnership
 Eastwick Joint Venture III—Limited Partnership
 Eastwick Joint Venture IV—Limited Partnership
 Eskimo Europ, S.a.r.l.
 Eskimo Pie Corp.
 Egyptian Aluminum Products Co.
 Gas Natural Columbiano, S.A.
 Hamburger Aluminum—Werk Gesellschaft mit
 beschränkter Haftung
 Industria Navarra del Aluminio, S.A.
 Jamaica Alumina Security Company, Ltd. (AC)
 Jamaica Reynolds Bauxite Partners (AC)
 Lomer Development Corp.
 Lynx—Canada Exploration Ltd.
 Madison Manor—Partnership (AC)
 Manicougan Power Company (AC)
 Midtown Associates—Partnership
 Mill Pond Development Corp.—Partnership
 Mill Pond Tower Associates—Partnership
 Minas do Dragao Ltda.
 Mineracao Sao Jorge Ltda.
 Mineracao de Bauxita Ltda.
 Minerais de Aluminio Ltda.
 National Housing Partnership
 New Eastwick Corporation
 Oceanside Estates Associates—Partnership
 Omnia Minerios Ltd.
 Phillips—C.B.A. Conductors Limited
 Presidential Development Corp.
 Presidential Plaza Associates
 Presidential Plaza Corp.
 Presidential Plaza Investors
 Puerto de Hierro, Sociedad Anomina (AC)

Rayburn Manor Associates—Partnership
Regency Joint Venture
Regency Joint Venture II
Regency West Associates—Partnership
Reynolds Aluminio, Sociedad Anonima
Reynolds Aluminum (Thailand) Co. Ltd. (AC)
Reynolds Aluminum Company of Canada
Reynolds Gilbane—Weybosset Joint Venture
Reynolds Philippine Corporation
Iranian Aluminum Co.
Reywest Development Corporation
Robertshaw Controls Co.
S.L.I.M.
Superenvases Envalic, C.A.
Titusville Manor Corporation—Partnership
UNCO, S.A. (AC)
Union Industrial y Astilleros Bananquilla Unial S.A.
Valesol Aluminio S.A.
Volta Aluminum Co. Ltd.
Westeel International Ltd. (AC)
Weybosset Hill Development Corp.
Worsley Alumina Pty. Ltd.
Worsley Joint Venture